79-1819

Supreme Court, U.S.
FILED
MAY 16 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

THE UNITED ILLUMINATING COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

NEW HAVEN WATER COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

THE SOUTHERN CONNECTICUT GAS COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

On Appeal from the Supreme Court of the State of Connecticut

JURISDICTIONAL STATEMENT

JOHN W. BARNETT
DONALD F. KEEFE

Of Counsel:
WIGGIN & DANA
By Madeline F. Grossman
195 Church Street
New Haven, Connecticut 06508
(203) 789-1511

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
By Barry C. Hawkins
Susan J. Bryson
205 Church Street
New Haven, Connecticut 06509
(203) 789-0700

May 16, 1980

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

THE UNITED ILLUMINATING COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

NEW HAVEN WATER COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

THE SOUTHERN CONNECTICUT GAS COMPANY

v.

CITY OF NEW HAVEN, EDWARD CLIFFORD, AND MARTIN J. GRIFFIN

On Appeal from the Supreme Court of the State of Connecticut

JURISDICTIONAL STATEMENT

JOHN W. BARNETT
DONALD F. KEEFE

Of Counsel:
WIGGIN & DANA
By Madeline F. Grossman
195 Church Street
New Haven, Connecticut 06508
(203) 789-1511

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
By Barry C. Hawkins
Susan J. Bryson
205 Church Street
New Haven, Connecticut 06509
(203) 789-0700

May 16, 1980

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provisions and Statutes	3
Statement of the Case	5
The Question is Substantial	12
Conclusion	24
Appendix	1A

CITATIONS

Page

Cases:

Amador Valley Joint Union High School District v. *State Board of Equalization*, 22 Cal. 3d 208, 149 Ca. Rptr. 239, 583 P.2d 1218 (1978) (In bank) 20

Bethke v. *County of Brown*, 301 Minn. 380, 223 N.W. 2d 757 (1974) 18

Carkonen v. *Williams*, 76 Wash. 2d 617, 458 P.2d 280 (1969) (en banc) 19

Cohen v. *California*, 403 U.S. 15, rehearing denied, 404 U.S. 876 (1971) 2

Conzelman v. *Bristol*, 122 Conn. 218 (1936) 7

Cumberland Coal Co. v. *Board of Revision Of Tax Assessments*, 284 U.S. 23 (1931) 15, 16

District of Columbia v. *Green*, 310 A.2d 848 (D.C. 1973) 18

Dore v. *Kinnear*, 79 Wash. 2d 755, 489 P.2d 898 (1971) (en banc) 18

E. Ingraham Co. v. *Bristol*, 144 Conn. 374 (1957) .. 7

Hillsborough v. *Cromwell*, 326 U.S. 620 (1946) 15

Iowa-Des Moines National Bank v. *Bennett*, 284 U.S. 239 (1931) 15

Japan Line, Ltd. v. *County of Los Angeles*, 441 U.S. 434 (1979) 2

Louisville & Nashville R. Co. v. *Public Service Commission of Tennessee*, 249 F.Supp. 894 (M.D. Tenn., 1966), aff'd 389 F.2d 247 (6th Cir. 1968) .. 18

Page

McCarthy v. *Jones,* 449 F.Supp. 480 (S.D. Ala. 1978) 18

Nuttall v. *Leffingwell,* 193 Colo. 137, 563 P.2d 356 (1977) (en banc) 19

Raymond v. *Chicago Union Traction Co.,* 207 U.S. 20 (1907) 15

Recanzone v. *Nevada Tax Comm.,* 92 Nev. 302, 550 P.2d 401 (1976) 19

Sioux City Bridge v. *Dakota County,* 260 U.S. 441 (1923) 15, 16

Southland Mall, Inc. v. *Garner,* 455 F.2d 887 (6th Cir. 1972) 19

Sunday Lake Iron Co. v. *Wakefield,* 247 U.S. 350 (1917) 15, 16, 19, 23

Tappan v. *Merchants' National Bank,* 86 U.S. (19 Wall.) 490 (1873) 16

Weissinger v. *Boswell,* 330 F.Supp. 615 (M.D. Ala. 1971) 18

Zucht v. *King,* 260 U.S. 174 (1922) 2

Statues:

28 U.S.C. §1257(2) 2

Conn. Gen. Stat. §12-62a(e) 3, 5, 8, 12

Conn. Gen. Stat. § 12-62 ..... 6, 7, 17

Conn. Gen. Stat. §12-63 6

Conn. Gen. Stat. §12-40 6

Conn. Gen. Stat. §12-41 6

Page

Conn. Gen. Stat. §12-62a(b) 7, 17

Conn. Gen. Stat. §12-64 7

Ordinance:

An Ordinance of the City of New Haven Concerning Staged Increases in Certain Real Property Tax Assessments 3, 5, 12

JURISDICTIONAL STATEMENT

The appellants, The United Illuminating Company ("UI"), New Haven Water Company ("Water Company"), and The Southern Connecticut Gas Company ("Gas Company"), appeal from the final judgment of the Supreme Court of the State of Connecticut, released February 19, 1980, setting aside the judgment of the court below and declaring that § 12-62a (e) of the General Statutes of the State of Connecticut and the Ordinance of the City of New Haven, effective October 18, 1978, as amended effective January 2, 1979, implementing the statute, do not violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.[1]

The appellants hereby present this Jurisdictional Statement to show that this Court has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Superior Court for the Judicial District of New Haven of the State of Connecticut, which appears in the appendix hereto, p. 23A, *infra*, is unreported.

The opinion of the Supreme Court of the State of Connecticut, which appears in the appendix hereto, p. 1A, *infra*, is reported at Conn. , 41 Conn. L.J. No. 34 at 1 (February 19, 1980).

---

[1] In March of 1979, UI commenced an action in the Superior Court for the Judicial District of New Haven and, subsequently, the Water Company and the Gas Company instituted similar actions. The defendants in each case were the City of New Haven, Martin J. Griffin, Tax Collector of the City, and Edward Clifford, Tax Assessor of the City. On May 8, 1979, judgment was entered in each of the three cases. For purposes of the appeal to the Supreme Court of the State of Connecticut, the cases were consolidated.

JURISDICTION

The Supreme Court of the State of Connecticut entered a judgment, released February 19, 1980, setting aside the judgment of the court below and declaring that § 12-62a (e) of the General Statutes of the State of Connecticut and the Ordinance of the City of New Haven implementing the statute do not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. No further review is possible by any Connecticut court.

A notice of appeal to this Court was filed by the appellants, UI, the Water Company, and the Gas Company, on March 27, 1980, with the Clerk of the Superior Court for the Judicial District of New Haven, and with the Clerk of the Supreme Court of the State of Connecticut. Each such notice of appeal is reproduced in the appendix hereto, pp. 51A and 54A, *infra.*

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2). This Court's opinions in *Japan Line, Ltd.* v. *County of Los Angeles,* 441 U.S. 434, 440-41 (1979); *Cohen* v. *California,* 403 U.S. 15, 17-18, rehearing denied, 404 U.S. 876 (1971), and *Zucht* v. *King,* 260, U.S. 174, 176 (1922) sustain jurisdiction of this appeal.

QUESTION PRESENTED

Whether § 12-62a (e) of the General Statutes of the State of Connecticut and the Ordinance of the City of New Haven implementing the statute, which set forth a scheme of taxation which intentionally and systematically provides for the underassessment of certain real property within a class of like property, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES

Connecticut General Statutes § 12-62a (e):

"Any such municipality may, with respect to the assessment list in such municipality in a year in which a revaluation becomes effective, as required under section 12-62, provided such revaluation has resulted in an increase in the total assessed value of real property on the assessment list in the year immediately preceding such revaluation of no less than thirty percent of the total assessed value, commencing with any such assessment list for 1977, by vote of its legislative body and in the manner provided in this subsection, defer all or any part of the amount of such increase in the assessed value of real property included in the assessment list in the year such revaluation becomes effective, provided in the year such revaluation become effective and in any succeeding year in which such deferment is allowed by such municipality, the assessed value of such real property in the year immediately preceding revaluation shall be increased in such equal amounts in each of such years that the assessed value of such real property in the last year of such deferment, but in no event later than the fourth year following the year of such revaluation, shall be no less than the assessed value applicable to such property in the year of revaluation except for deferment of such increased assessment in accordance with this subsection.

Ordinance of the City of New Haven:

"NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW HAVEN THAT:

(1) In the event the October 1, 1978 assessment list

results in an increase in the total assessed value of all real property in excess of thirty percent (30%) over the October 1, 1977 assessment list, all of such excess assessment on any piece of residential* real property shall be divided into five (5) equal increments, and each of said increments shall be effective on each of the succeeding five list years, thereby successively increasing each such residential* real property assessment increase until the full assessment originally fixed in October 1, 1978 is implemented.

(2) Any decrease in any real property assessment shall be fully effective on the list of October 1, 1978.

(3) Notice of the amounts of each of said phased assessments over said five (5) year period, shall be delivered to each taxpayer of residential* real property simultaneously with the notice of the October 1, 1978 assessment, and simultaneously with each of the succeeding four (4) annual assessment notices.

Enacted by the the Board of Aldermen, October 4, 1978.
Approved by the Mayor, October 11, 1978.
Operative and in effect, October 19, 1978.

Attest:

WILLIAM JONES
City/Town Clerk

Fourteenth Amendment to the Constitution of the United States:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

* The word "residential" was deleted by an amendment "An Ordinance Amending a Previous Ordinance Concerning Staged Increases in Certain Real Property Tax Assessments."

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case involves an appeal from a decision of the Supreme Court of the State of Connecticut, reversing a decision of the Superior Court for the Judicial District of New Haven, and declaring that Connecticut General Statutes § 12-62a (e) and a New Haven Ordinance ("the Ordinance") enacted pursuant to the statute do not violate the Equal Protection Clause contained in the Fourteenth Amendment to the Constitution of the United States.

The enabling statute at issue permitted municipalities which, as a result of a general revaluation, had sustained increases in total real property assessments of at least 30% over the prior year's assessment, to phase-in the assessment increase. The Ordinance, adopted by the City of New Haven pursuant to this statute, provided that the increase in the assessed value of a parcel of real property was to be phased-in over a five year period.

The significance of the phase-in statute and ordinance may best be understood within the context of the overall property tax scheme in Connecticut. The law of Connecticut, like that of each of the other 49 states and the District of Columbia, provides for an *ad valorem* tax on real property. The *ad valorem* tax process is aimed at raising a fixed amount of revenue by direct levy against the assessed value of taxable property.

In Connecticut an individual property owner's tax is

determined as follows: Property is valued and a percentage of that value, sometimes called the assessment ratio, is assigned as the "assessed value." The assessor for each municipality prepares a yearly list, called the "grand list," of the assessed value of real and personal property located in the municipality. The local government then adopts a budget and determines the tax rate, or mill rate (expressed in tax dollars per thousand dollars of assessed value), for that year by dividing that portion of the budget to be raised by property taxes by the grand list. The amount owed by each taxpayer is determined by multiplying the assessed value of the taxpayer's taxable property by the mill rate. Thus, an actual tax is formulated with reference to three factors: the valuation, the percentage of the value which is subject to taxation, and the mill rate.

The Connecticut statutes require that property be valued for purposes of the *ad valorem* tax at *present* true and actual value. Conn. Gen. Stat. § 12-63. Personal Property is revalued annually and it is, therefore, listed at true current value each year. Conn. Gen. Stats. §§ 12-40, 12-41. Real estate, however, is revalued only periodically. Changes in value not occasioned by new construction or other similar circumstances are not reflected on the grand list until the next revaluation. During the period between revaluations, therefore, real property which increases or decreases in value is not listed at current value. The longer the period between revaluations, the greater the deviation from actual current value. By statute these deviations in value are to be corrected by periodic revaluations. Conn. Gen. Stat. § 12-62.

For many years prior to 1978, Connecticut law required the revaluation of real estate "during each period of ten

years." Conn. Gen. Stat., § 12-62 (Revision of 1958; repealed and replaced by 1974 Conn. Pub. Acts 74-263). In 1936, the Connecticut Supreme Court construed the predecessor statute to mean revaluation was required once in each decade. *Conzelman* v. *Bristol,* 122 Conn. 218, 223 (1936). Therefore, once in its history a municipality could go as long as 19 years without a revaluation.

In 1974, however, the legislature amended the statute to require, commencing October 1, 1978, a revaluation no longer than ten years after the last preceding revaluation. 1974 Conn. Pub. Acts 74-263 (codified at Conn. Gen. Stat. § 12-62). Those municipalities which had not revalued all real property since 1968 or earlier were compelled to revalue in 1978.[1]

In addition, the 1974 legislature required that each municipality, commencing with its next revaluation, assess all property at 70% of its actual value. 1974 Conn. Pub. Acts 74-299 (codified at Conn. Gen. Stat. § 12-62a (b)). Historically, the requirement in Connecticut was to include property on the grand list at 100% of its present true and actual value, a requirement which was generally ignored. See *E. Ingraham Co.* v. *Bristol,* 144 Conn. 374 (1957). In 1957, the legislature amended the statute to require that all property within a municipality be listed "at a uniform percentage of its present true and actual value," a requirement acknowledging the existing fractional valuation practice. 1957 Conn. Pub. Acts 673 § 6 (codified at Conn. Gen. Stat. § 12-64). The 1974 statute extended the uniform

---

[1] Under the old statute every municipality which had last revalued real property in 1968 or earlier would have had to revalue in either 1978 or 1979.

assessment rate requirement throughout the state, establishing a 70% assessment rate for every municipality.[2]

By 1974, then, the legislature contemplated the revaluation of all real property in the state every ten years and a uniform assessment ratio of 70% throughout the state. Each municipality was, however, free to determine the applicable mill rate to be determined by reference to the town's budgetary requirements.

Obviously, the larger the grand list, the lower the mill rate applicable to all property owners. Less obviously, perhaps, a revaluation does not, per se, have the effect of increasing taxes. If there is no increase in a municipality's budget requirements, there will be no increase in the total taxes for that municipality. A revaluation serves simply to reallocate the burden of those taxes on the basis of current values.

On May 1, 1978, the legislature enacted Connecticut General Statutes § 12-62a (e), the phase-in statute, which is the subject of this action. That statute permitted qualifying municipalities within the state to defer any increase in the assessed value of real property in a year of revaluation, the increase to be phased-in over a period of time no longer than five years. In essence, the statute permitted a municipality to defer recognition of the present true and actual value of real property which had increased in assessment value.

---

[2] In fact, changes in the ratio of actual to assessed value are of no significance. Mathematically, the particular ratio used has no effect on the taxpayer's bill. So long as the ratio is uniform within the municipality and the taxes to be raised are the same, the taxpayer's bill will be identical whether the standard for assessment is 100% of actual value, 70% or 10%. See Appendix 5, *infra*.

The City of New Haven, which had not revalued real property since 1964, completed a revaluation of its real property as of October 1, 1978. The grand list of that date was to become effective in February, 1979. Prior to that effective date, the City adopted a phase-in ordinance providing that any increase in assessed value of a parcel of real property resulting from the revaluation was to be divided into five equal increments, with one increment to be added to the tax list during each of the next five assessment years.[3]

When the New Haven grand list was filed in February, 1979, those properties which had declined in value or remained the same were listed at 70% of their true and actual value, while those properties which had increased in value were listed at varying percentages of their true and actual value, with the actual percentage depending upon the amount of the assessment increase. Those properties which had increased most in value were listed at the smallest percentage of their present value. Some properties were listed at as little as 15% of their current value.

Another effect of the phase-in was that parcels of property having identical value were subject to different taxes, since by virtue of the phase-in formula different percent-

---

[3] With the phase-in, the assessed value of a parcel of property which increased in assessed value as a result of the revaluation, is computed as follows: The 1977 assessment is subtracted from the 1978 assessment (70% of the true and actual value of the property as determined by the revaluation) and the difference is divided by five. The 1978 assessment, by virtue of the phase-in, results from adding that quotient onto the 1977 assessment. For each of the following four years that same figure is added to the previous year's assessment, until 1982 when the assessment figure will be the full 70% of the true and actual value as determined by the 1978 revaluation.

ages of the true and actual value were subject to taxation.[4]

The implementation of the phase-in also had a dramatic effect on the New Haven grand list. Had all of the property in the City been assessed at the statutory uniform rate of 70% of true and actual value, the list would have amounted to approximately $885,000,000, while with the phase-in the grand list was reduced to approximately $550,000,000. The evidence indicated that with the larger grand list, the mill rate would have been 47.3 mills, as opposed to the rate of 66.5 mills which resulted from implementation of the phase-in.

Those taxpayers whose property was assessed at 70% of true and actual value are disadvantaged by the phase-in legislation both because other property owners are permitted to pay tax on a lower percentage of the value of their property and because, by virtue of that discrimination, the mill rate is higher. Indeed, because of the increased mill rate, only those taxpayers whose property increased by more than 56% in assessed value actually benefit from the phase-in, a fact found by the trial judge. The financial benefit to be derived from the phase-in for a particular

---

[4] For example, a parcel of real property with a true and actual value of $10,000 on the October 1, 1977 grand list would have be subject to a $6,000 assessment. Assume that, as a result of the revaluation, that property was revalued at $8,000, and applying the 70% assessment rate, was assessed at $5,600. Because the assessment decreased, that property would be subject to an assessment rate of 70% for all five years of the phase-in. In contrast, a similar parcel of real property with a $4,000 true and actual value on October 1, 1977 grand list would have been assessed at 60% for an assessment of $2,400. Assume that as a result of the revaluation its true and actual value was increased by 100% to $8,000. Applying the 70% assessment rate, the assessment would be, as with the first property $5,600. However, because the assessment on this property increased, the assessment rate, with the phase-in, would be 38% or an assessment of $3,040 on the 1978 grand list.

parcel of property increases in direct proportion to the amount of assessment increase for that parcel. Consequently, property which was underassessed prior to the revaluation, continues to be underassessed. The greater the previous underassessment, the greater the benefit to be derived from the phase-in.

Each of the appellants own real property located in the City of New Haven. Both UI and the Water Company own property which has not increased in value since the last revaluation and which was, therefore, listed on the October 1, 1978 grand list at 70% of its true and actual value. The Gas Company owns real property which, although it increased 46% in assessed value, is actually subject to a higher tax because of the increased mill rate resulting from the phase-in procedure.[5]

In March of 1979, UI, the Water Company and the Gas Company commenced separate actions in the Superior Court for the Judicial District of New Haven against the City, Martin J. Griffin, Tax Collector of the City, and Edward Clifford, Tax Assessor of the City. In each case, the plaintiff claimed that the phase-in statute and the ordinance of the City violated its rights to equal protection as guaranteed by the Fourteenth Amendment to the Constitution of the United States. According to each complaint, the phase-in resulted (i) in some real property being included on the grand list at less than 70% of true and actual value, (ii) in a reduction in the total value of the grand list, and (iii) in the necessity for a higher mill rate to produce the revenue required by the City.

---

[5] The Connecticut Supreme Court erroneously states in its opinion that the Gas Company owns "personalty only." The evidence before the trial court indicated that the Gas Company owns real property in the City of New Haven. (Gas Company Exhibit H.)

The three actions were consolidated for trial and on May 8, 1979, judgment entered in favor of the plaintiffs declaring that Connecticut General Statutes § 12-62a (e) is unconstitutional in that it violates the Fourteenth Amendment to the Constitution of the United States, and that the Ordinance of the City of New Haven implementing the phase-in statute is unconstitutional in that it violates the same provision of the United States Constitution.

The Supreme Court of the State of Connecticut, in a decision released February 19, 1980, set aside the judgment of the trial court and declared that the statute and the ordinance were not violative of the Fourteenth Amendment to the Constitution of the United States. It is from this decision of the highest court of the State of Connecticut that an appeal is taken to this Court.

After the trial court's decision in this case, the Connecticut General Assembly placed a five year moratorium on the adoption of the phase-in procedure by additional municipalities. In 1980, following the decision of the Connecticut Supreme Court, the legislature repealed the moratorium. If, as expected, the bill is signed by the Governor, the phase-in procedure will be available to Connecticut municipalities in a year of revaluation. Substitute H. B. 59-60 (1980).

THE QUESTION IS SUBSTANTIAL

In each of the 50 states and the District of Columbia the *ad valorem* property tax is a major source of revenue for local government.[6] With increasing demand for local tax

[6] In 1977 property taxes produced $64.2 billion dollars in revenue. U.S. Department of Commerce, Bureau of the Census, *1977 Census of Governments*, volume 2 "Taxable Property Values and Assessment/Sales Price Ratios," p. 10.

revenues and consequent increases in the property tax, the states have made an effort to alleviate the impact of the property tax on various classes of taxpayers thought to be unfairly burdened. Typically state legislation has attempted to identify and then benefit (or unburden) classes of taxpayers. The elderly, the handicapped and veterans receive various forms of exemptions and relief from the property tax, as do businesses which agree to locate in a particular taxing jurisdiction. Homeowners may be given a "homestead" exemption. Different rates of tax may be applied to property used for different purposes, for example, industrial or commercial property may be taxed at a different rate from residential property.[7]

The Connecticut legislation at issue in this case, however, does not attempt to identify classes of taxpayers or classes of properties for special benefits or burdens. Instead, the focus of the phase-in legislation is exclusively on one component of the property tax formula—valuation.

Valuation is at the heart of the system of *ad valorem* property taxation. The "fairness" of the system depends upon maintaining, on as current and accurate a basis as possible, the fair market values of all properties to be assessed and taxed.[8] If such a valuation system is maintained, the other variables in the system—rates and exemptions—can

---

[7] See Advisory Commission on Intergovernmental Relations, *The Property Tax in a Changing Environment—Selected State Studies*, pp. 37-232, *passim* (1974) discussing property tax statutes in the states.

[8] See International Association of Assessing Officers, *Property Tax Relief and Reform*, 1 Assessment Digest 29 (July/August 1979); Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Volume 1, pp. 13, 40-41 (1963); Note, *Tax Assessments of Real Property: A Proposal For Legislative Reform*, 68 Yale L.J., 335, 369-378 (1958).

be manipulated with substantially predictable fiscal results to provide for social objectives thought to be desirable. Legislation to achieve these objectives then can be tested constitutionally by a "rational basis" analysis.

The Connecticut phase-in legislation which focuses solely on valuation, and more narrowly on increases in valuation between times of property revaluation, identifies the increases as the "problem" and attempts to "control" those increases by phasing them in over a period of up to five years.

The infirmity in this approach—both practically and constitutionally—is that the factor of increase in valuation is a variable which affects properties in haphazard patterns bearing no relationship to discernible legislative objectives.

Properties increase or decrease in value for a multitude of reasons and at different rates. Yet, the phase-in benefits every property which has increased sufficiently in value, regardless of the reason for the increase, the purpose for which the property is used, or the characteristics of the property owner. For example, an owner of vacant land which increased significantly in value because the zoning changed from residential to commercial would benefit, while a homeowner whose property did not increase in value would pay higher taxes.

The haphazard effects of the phase-in do not conform to the constitutional requisites of a taxing statute. The equal protection clause of the Fourteenth Amendment guarantees taxpayers similarly situated a right to equal treatment. The state may not intentionally subject a taxpayer to taxes which are not imposed on others of the same class. When the tax in question is an *ad valorem* property tax, the right to

equal treatment necessarily implies a right to uniformity and equality in valuation and assessment ratio.

These principles have been established in a long line of cases decided by this Court:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20, 35, 37. It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity.

Sunday Lake Iron Co. v. *Wakefield*, 247 U.S. 350, 352-53 (1917). See also *Hillsborough* v. *Cromwell*, 326 U.S. 620, 622-23, (1946); *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239 (1931); *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments*, 284 U.S. 23 (1931); *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441 (1923).

Early in the history of the Fourteenth Amendment, this Court acknowledged that absolute uniformity in valuation and taxation would be an unrealistic standard.

> Absolute equality in taxation can never be obtained. That system is the best which comes the nearest to it.

Tappan v. *Merchants' National Bank*, 19 Wall. 490, 504 (1873). Over the years this Court has adopted the standard identified in *Sunday Lake Iron Co.* v. *Wakefield, supra, as* the "principle of practical uniformity."

Under the principle of practical uniformity, those inequalities which result from practical necessity or from unintentional, random errors of judgment by taxing officials are not equal protection violations. See, e.g., *Sunday Lake Iron Co.* v. *Wakefield, supra*; *Sioux City Bridge, Co.* v. *Dakota County, supra.* However, the intentional and systematic undervaluation of some property in the same class denies equal protection to those taxed on the full value of their property. For example, in *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments, supra,* this Court found unconstitutional a formula assessing all coal property at the same value per acre despite acknowledged differences in market value.

It has been the appellants' contention throughout the course of this litigation that the Connecticut phase-in legislation denies them equal protection under the foregoing principles. The inequalities in assessment produced by the phase-in are not the result of either random errors of judgment or practical necessity. Rather, by virtue of a systematically and intentionally imposed taxing formula, the phase-in creates a situation in which individual parcels of real property are assessed at varying percentages of their acknowledged true and actual value, ranging from a high of 70% to a low of as little as 15%.

Under the phase-in, parcels of real property used for the same purpose and having identical current market value are taxed at different rates. The sole distinction be-

tween such parcels is that the assessed value of those taxed at the lower rate has increased or, in other words, that they were underassessed prior to the revaluation.

This case does not involve the right of Connecticut to establish different classes of real property and to subject those different classes to varying assessment ratios. The Connecticut legislature has not in this statute classified taxpayers or property. It has chosen to treat all real property as a single class, and to employ a taxing formula which varies on an individual basis the ratio of assessed value to true value. Therefore, the sole question in this case is whether property of the same class may be assessed at different ratios.

Despite the appellants' claim that the phase-in is unconstitutional because it creates systematic and intentional undervaluation of certain property within a class, the Connecticut Supreme Court refused to recognize the significance of the constitutional right to practical uniformity established in opinions of this Court. Instead the Connecticut court relied solely on what it described as the "rational basis test," under which legislation will not be found to violate the equal protection clause if there is any conceivable rational basis which might support it.[9]

---

[9] The Connecticut court went on to identify as the conceivable basis for the phase-in the coincidence of two statutes, §§ 12-62 (revaluation required every ten years) and 12-62a (b) (uniform assessment rate of 70 percent) which might result in increased taxes for numerous taxpayers. However, the change to the 70% assessment ratio has no effect on the tax bills of individual taxpayers. See p. 8 n.2, *supra*. As for periodic reassessment, that has long been required in Connecticut and in every other state but three. Revaluation is necessary to correct inequities which develop over time. The only rational and constitutional method for preventing dramatic shifts in tax burdens in a year of revaluation would be to shorten Connecticut's unusually long revaluation cycle which permits significant inequity to develop between revaluations.

The Connecticut court has thus placed itself squarely in conflict with opinions of this Court. Moreover, while this Court last addressed a claim of intentional and systematic discrimination in assessments in 1946, many of the lower federal courts and the state courts continue to apply the principle enunciated in the *Sunday Lake Iron Co.* line of cases. The Connecticut court's rejection of the principle is in direct conflict with the opinions of those courts as well.

In recent years, for example, federal courts, applying the principle of practical uniformity, have found unconstitutional a system whereby railroad real property was assessed at a higher ratio than the other real property in the same class, *Louisville & Nashville R. Co.* v. *Public Service Commission of Tennessee*, 249 F. Supp. 894 (M.D. Tenn., 1966), aff'd. 389 F.2d 247 (6th Cir. 1968).[10] Similarly, in *Weissinger* v. *Boswell*, 330, F. Supp. 615 (M.D. Ala., 1971) a three judge court found unconstitutional the lack of uniformity in assessment ratios between Alabama counties. A subsequent attempt to cure the unconstitutionality of the assessment practice by legislating different assessment ratios for different counties was rejected on constitutional grounds in *McCarthy* v. *Jones*, 449 F. Supp. 480 (S.D. Ala., 1978).

State courts, relying on the principles established by this Court, have found revaluations of only some of the property within a taxing district unconstitutional. See *Bethke* v. *County of Brown*, 301 Minn. 380, 223 N.W.2d 757 (1974); *Dore* v. *Kinnear*, 79 Wash.2d 755, 489 P.2d 898 (1971). See also *District of Columbia*, v. *Green*, 310

---

[10] Congress has now declared that rail transportation property may not be assessed at a higher ratio of true market value than the ratio for all other commercial and industrial property in the same assessment jurisdiction. 49 U.S.C. § 11503 (b) (1).

A.2d 848 (D.C. 1973) in which the court, relying on principles established in *Sunday Lake Iron Co.* v. *Wakefield, supra,* rejected a plan which increased the assessment ratio for only a portion of the properties in the taxing district during the year in question.

There is currently pending before the Minnesota Supreme Court a group of cases challenging the Minnesota "limited market value" law, Minn. Stat. § 273.11(2), which, like the Connecticut legislation, phased-in increases in market value revealed by a revaluation.[11] In one of the cases, *McCannel* v. *Minnesota,* the Minnesota Tax Court, in an unpublished opinion, found the law unconstitutional relying on the *Sunday Lake Iron Co.* line of cases.

Still other courts relying on the opinions of this Court have weighed particular assessment procedures against the principle of practical uniformity and found them constitutional despite temporary inequalities because such inequalities were the result of either practical necessity or an unintentional error of judgment by a taxing official. See, e.g., *Southland Mall, Inc.* v. *Garner,* 455 F.2d 887 (6th Cir. 1972); *Carkonen* v. *Williams,* 76 Wash.2d 617, 458 P.2d 280 (1969) (en banc); *Recanzone* v. *Nevada Tax Comm.,* 92 Nev. 302, 550 P.2d 401 (1976); *Nuttall* v. *Leffingwell,* 193 Colo. 137, 563 P.2d 356 (1977) (en banc).

In direct contrast with the great number of courts which continue to recognize the right of a property tax-

---

[11] The Minnesota statute, which was enacted in 1973 and amended a number of times between then and 1979 when it was repealed, essentially provided that in valuing real property the assessor would be limited in making increases over previous valuation to a specified percentage of the previous valuation. Any excess over the percentage was to be added in subsequent years.

payer to practical uniformity, the California Supreme Court, like the Connecticut Supreme Court, appears to have discarded the principle. See *Amador Valley Joint Union High School District* v. *State Board of Equalization*, 22 Cal.3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239, (1978) (In bank). In the face of an equal protection challenge, the California court upheld California's much publicized Proposition 13 which amended the California Constitution by initiative. Proposition 13 provides, among other things, that real property acquired by a taxpayer prior to 1975 may be taxed at no more than 1% of its "full cash value" as shown on the 1975 tax bill plus a 2% yearly increase for inflation, while real property acquired after 1975 may be taxed at 1% of its value on the date of acquisition plus a 2% yearly increase for inflation. Thus, two similarly situated taxpayers owning properties of the same current value may be taxed at different rates because one acquired his property in 1974 and the other in 1976.

The California court, like the Connecticut court, relied on a rational basis test in reaching its result. It distinguished opinions of this Court rejecting intentional, systematic undervaluation of property on the ground that those cases do not require a state to adopt a current value basis for its property tax, but simply require uniformity once such a basis is adopted, and that California had now adopted an acquisition value rather than current value basis.[12] In dissent, Chief Justice Bird relied on the *Sunday Lake Iron Co.* line of cases in expressing her opinion that the California procedure is unconstitutional because it imposes different tax assessments on property of similar current worth.

[12] Connecticut by statute continues to base its property tax on current value, with the exception of the phase-in procedure.

These conflicting decisions suggest a need to clarify the continuing vitality and applicability of the standard of practical uniformity established by this Court. Moreover, the subject matter of these cases makes the need for clarification compelling.

The situation in Connecticut which gave rise to the enactment of the phase-in statute is symptomatic of a national problem. Despite the vast sums raised by property taxes, property tax systems have been characterized by confusion, inefficiency and unfairness.[13] A major problem, perhaps *the* major problem of property tax administration, is assessment inequity.

In 1963 the Advisory Commission on Intergovernmental Relations studied the property tax. The Commission's report identified unequal assessment and underassessment as major problems in a large part of the nation.[14]

The Commission presented 29 recommendations to the states, many aimed at eliminating assessment inequities. Yet, 10 years later, in 1973, when the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations conducted a survey to measure progress by the States, the results were disappointing. Senator Muskie, chairman of the subcommittee, noted:

> The results of the subcommittee survey . . . indicate that by and large, the States have not met their respon-

---

[13] See Inman and Rubinfeld, *The Judicial Pursuit of Local Fiscal Equity*, 92 Harv. L. Rev. 1662, text at n. 42 (1979); Lesnick, *Prospects For Full Value Assessment*, 5 Hofstra L. Rev. 236, 243-44 and text at n. 1 (1977); Note, *Inequality in Property Tax Assessments: New Cures For An Old Ill*, 75 Harv. L. Rev. 1374, 1377-80 (1962); Note, *Tax Assessment of Real Property*, *supra* 68, Yale L.J. 369-78.

[14] Advisory Commission on Intergovernmental Relations, *The Role of the States In Strengthening the Property Tax*, *supra*, Volume 1, pp. 40-46.

sibilities for making property tax assessments fair, expert and easily understood.[15]

In Connecticut a Special Commission on Tax Reform appointed by the Governor in 1972 found the same situation. The Commission identified assessment inequality as the most serious of all the property tax administration problems in Connecticut.[16] Consequently, the Commission devoted an entire section of its report to assessment reform. Among the Commissions' recommendations to correct the problem were annual computer-assisted reassessments and revaluation by inspection of one-fifth of the property in a municipality each year and the entire municipality in a five year period.[17]

Rather than following the Commission's recommendations, the legislature adopted a 10-year revaluation cycle. Subsequently it enacted the phase-in legislation, which serves to exacerbate rather than correct the problem of unequal assessments.

In the past this Court has found unconstitutional taxing procedures which systematically and intentionally impose upon certain taxpayers higher proportionate taxes, whether by virtue of inequitable valuation, differing assessment ratios or higher tax rates, than those imposed upon other taxpayers in the same class. The statute and ordinance at issue in this case impose such a system, thwarting the accepted principle of practical uniformity in taxation.

---

[15] Senate Committee on Government Operations, Subcommittee on Intergovernmental Relations, 93rd Congress, 1st Session, *Status of Property Tax Administration in The States*, p. v (Comm. Print 1973).

[16] State of Connecticut, *Report of the Governor's Commission on Tax Reform*, Volume II, Part A, p. 15 (1972).

[17] Ibid., Volume II, Part C, p. 94.

The national scope of the problem of inequitable assessments and the confusion in the case law indicate an urgent need for this Court to clarify the law and to reaffirm the essential principles set forth in *Sunday Lake Iron Co.* v. *Wakefield, supra,* and its progeny.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

JOHN W. BARNETT
Of Counsel:
WIGGIN & DANA
By Madeline F. Grossman
195 Church Street
New Haven, Connecticut 06508
(203) 789-1511
Counsel for the Appellant,
The United Illuminating Company

DONALD F. KEEFE
Of Counsel:
TYLER, COOPER, GRANT,
BOWERMAN & KEEFE
By Barry C. Hawkins
Susan J. Bryson
205 Church Street
New Haven, Connecticut 06509
(203) 789-0700
Counsel for the Appellants,
The Southern Connecticut Gas
Company
New Haven Water Company

APPENDIX

APPENDIX 1

Supreme Court

October Term, 1979

UNITED ILLUMINATING COMPANY *v.* CITY OF NEW HAVEN ET AL.

NEW HAVEN WATER COMPANY *v.* CITY OF NEW HAVEN ET AL.

SOUTHERN CONNECTICUT GAS COMPANY *v.* CITY OF NEW HAVEN ET AL.

COTTER, C. J., LOISELLE, BOGDANSKI, SPEZIALE and PARSKEY, Js.

Argued October 4, 1979—decision released February 19, 1980

Actions for declaratory judgments determining the constitutionality of a statute and a municipal ordinance, and for injunctive relief, brought to the Superior Court in the judicial district of New Haven and tried to the court, *Hadden, J.;* judgments holding the statute and ordinance unconstitutional, from which the defendants appealed to this court. *Error; judgment directed.*

Harold C. Donegan, corporation counsel, with whom was *Dennis L. Pieragostini*, deputy corporation counsel, for the appellants (defendants).

John W. Barnett, with whom was *Madeline F. Grossman*, for the appellee (plaintiff United Illuminating Company).

Barry C. Hawkins, with whom was *Susan J. Bryson*, for the appellees (plaintiffs New Haven Water Company and Southern Connecticut Gas Company).

SPEZIALE, J. The issue presented on this appeal is whether § 12-62a (e) of the General Statutes (hereinafter referred to as the "act" or Public Acts 1978, No. 78-256), a tax phase-in statute for real property, and the ordinance of the city of New Haven effective October 18, 1978, as amended effective January 2, 1979, implementing the act, are unconstitutional in that they violate the equal protection clauses of the fourteenth amendment to the United States constitution,[1] and the constitution of Connecticut, article first, §§ 1 and 20.[2] We hold that both the statute and ordinance are constitutional.

---

[1] Section 1 of the fourteenth amendment to the United States constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[2] Sections 1 and 20 of article first of the constitution of Connecticut provide: "Sec. 1. All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community."

"Sec. 20. No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin or sex."

The plaintiffs, the United Illuminating Company (hereinafter referred to as "UI"), the New Haven Water Company (hereinafter referred to as "Water Co.") and the Southern Connecticut Gas Company (hereinafter referred to as "Gas Co."), are public utilities which own property in the city of New Haven. The defendants are the city of New Haven (hereinafter referred to as "the city"), Martin J. Griffin, the tax collector of the city, and Edward Clifford, the tax assessor of the city. In three separate actions the plaintiffs each sought, inter alia, declaratory judgments that the act and the ordinance are unconstitutional.[3] By agreement of all parties, the cases were combined for the purposes of trial and for appeal. From the declaratory judgment of the trial court holding the act and the ordinance unconstitutional as violative of the equal protection clauses of both the Connecticut and United States constitutions, the defendants have appealed to this court.

---

[3] Each of the plaintiffs also had sought the following injunctive relief: (1) a mandatory injunction requiring the defendant assessor to place on the tax list of October 1, 1978, all real property at not less than 70 percent of its true and actual value; (2) a permanent injunction restraining the defendants from assessing or collecting taxes on property of the plaintiffs in the city, real and personal, until the defendant assessor has placed on the tax list of October 1, 1978, all real property at not less than 70 percent of its true and actual value; (3) a temporary injunction restraining the defendants during the pendency of this litigation from assessing any taxes on the plaintiff on the basis of a tax list which does not assess at 70 percent of true and actual value all real property in the city, or from collecting, attempting to collect or imposing any lien, penalty or interest on the plaintiff for any tax assessed on the basis of a tax list which does not assess at 70 percent of true and actual value all real property in the city. The trial court issued injunctions granting all the relief sought. In its preliminary statement of issues the city had raised the question of whether the trial court erred in granting the "mandatory injunction" and the "permanent injunction." The issue is now moot because on June 14, 1979, we granted the defendant's motion for review and vacated the trial court's order terminating the stay of judgment. Subsequent motions for us to open our June 24, 1979 order were denied.

To place this case in its proper context, it is first necessary to consider certain legislation enacted prior to the adoption of Public Acts 1978, No. 78-256. Under § 12-62 of the General Statutes,[4] commencing October 1, 1978, the assessor of each municipality must revalue all real property no later than ten years following the last preceding revaluation and every ten years thereafter. Section 12-62a (b) of the General Statutes[5] mandates that all property, both realty and personalty, is to be assessed at a rate of 70 percent of true and actual value.

Because real property in New Haven had not been revalued since 1964, the defendant tax assessor revalued such property as of October 1, 1978. Further, the city was required to abandon its prior assessment rate of 60 percent of true and actual value and to assess in accordance with § 12-62a (b) at the uniform rate of 70 percent of true and actual value.

In 1978, § 12-62a of the General Statutes was amended by the act, Public Acts 1978, No. 78-256, § 3 (now codified

---

[4] Section 12-62 of the General Statutes provides: "PERIODIC REVALUATION OF REAL ESTATE. Commencing October 1, 1978, the assessors of all towns, consolidated towns and cities and consolidated towns and boroughs shall, no later than ten years following the last preceding revaluation of all real property and every ten years thereafter, view all of the real estate of their respective municipalities, and shall revalue the same for assessment and, in the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together, and all valuations shall be separately approved by a majority of the assessors."

[5] Section 12-62a (b) of the General Statutes provides: "Each such municipality shall, no later than the close of its next revaluation required under the provisions of section 12-62, assess all property for purposes of the local property tax at a uniform rate of seventy per cent of present true and actual value, as determined under section 12-63."

at § 12-62a (e) of the General Statutes).[6] The act, which took effect from its passage, essentially allows municipalities whose total real property assessments increased after revaluation pursuant to § 12-62 of the General Statutes by at least 30 percent over the assessment of the prior year to phase in the increase in assessment. The legislative body of the qualifying municipalities may "defer all or any part" of the increase in assessment provided that the amount deferred is phased in in equal amounts over a period not to exceed five years from the year of revaluation. The phase-in plan is, of course, inapplicable to those pieces of real property whose revaluation has not resulted in a higher assessment. Further, by its terms, the statutory phase-in applies only to real property; personal property is uniformly assessed at 70 percent of its real and actual value as required by § 12-62a (b) of the General Statutes.

---

[6] "Sec. 12-62a. UNIFORM ASSESSMENT DATE AND RATE. EXCEPTION TO UNIFORM RATE IN YEAR OF REVALUATION. DEFERMENT OF INCREASE IN ASSESSED VALUE ALLOWED. . . . (e) Any such municipality may, with respect to the assessment list in such municipality in a year in which a revaluation becomes effective, as required under section 12-62, provided such revaluation has resulted in an increase in the total assessed value of all real property on the assessment list in the year immediately preceding such revaluation of no less than thirty per cent of such total assessed value, commencing with any such assessment list for 1977, by vote of its legislative body and in the manner provided in this subsection, defer all or any part of the amount of such increase in the assessed value of real property included in the assessment list in the year such revaluation becomes effective, provided in the year such revaluation becomes effective and in any succeeding year in which such defendant is allowed by such municipality, the assessed value of such real property in the year immediately preceding revaluation shall be increased in such equal amounts in each of such years that the assessed value of such real property in the last year of such deferment, but in no event later than the fourth year following the year of such revaluation, shall be no less than the assessed value applicable to such property in the year of revaluation except for deferment of such increased assessment in accordance with this subsection."

Pursuant to the act, the city adopted the ordinance, as amended, which is set forth in the footnote below.[7] Simply stated, the ordinance, as it pertains to this case, provides that if the city is a qualifying municipality (that is, if the assessment list of October 1, 1978 reflects an increase in the total assessed value of real property which is at least 30 percent greater than the value of realty on the October 1, 1977 list) the increase in the assessed value of a parcel of real property is to be divided into five equal increments, one

---

[7] "AN ORDINANCE PROVIDING FOR STAGED INCREASES IN CERTAIN REAL PROPERTY TAX ASSESSMENTS.

WHEREAS; the City of New Haven is presently undergoing a decennial revaluation of its real property for the purpose of recomputing the assessment thereof for real property tax purposes as required by Section 12-62 of the Connecticut General Statutes; and

WHEREAS; Conn. P.A. 78-339 allows a municipality in which revaluation results in an increase in total assessed value of real property on the assessment list of 30% or more over the preceding list may, by action of the local legislative body, to gradually phase-in any such increase in assessments resulting from the state-mandated revaluation over a term of five (5) years, commencing in the year such revaluation becomes effective; and

WHEREAS; the increase in the total assessed value of real property in the City of New Haven as a result of the state-mandated revaluation is likely to exceed 30%; and

WHEREAS; the full increased assessment resulting from the required revaluation would become effective on the October 1, 1978 Grand List, with the taxes based on such increased assessment to be payable July 1, 1979 and thereafter, unless the Board of Aldermen adopts legislation authorizing the city to phase-in the new assessments.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW HAVEN THAT:

(1) In the event the October 1, 1978 assessment list results in an increase in the total assessed value of all real property in excess of thirty percent (30%) over the October 1, 1977 assessment list, all of such excess assessment on any piece of residential* real property shall be divided into five (5) equal increments, and each of said increments shall be effective on each of the succeeding five list years, thereby successively increasing each such residential* real property assessment increase until the full assessment originally fixed in October 1, 1978 is implemented.

(2) Any decrease in any real property assessment shall be fully effective on the list of October 1, 1978.

(footnote continued on following page)

to be added to the tax list for each of the five successive years beginning October 1, 1978. In other words, the increase in assessment will be phased in at a rate of 20 percent per year for five years; and, therefore, real property whose assessment increased as a result of the 1978 revaluation will not be assessed at 70 percent of the true and actual value as determined by the 1978 revaluation until the 1982 grand list.

In its memorandum of decision, the trial court found the following: On the list of October 1, 1977, the true and actual value of all real property in the city was $842,519,410; on the October 1, 1978 list it was $1,264,915,897. This represented an increase of approximately 50 percent. Without the act and the ordinance, the assessed value of all real property on the October 1, 1978 list would have been $885,441,127 ($1,264,915,897 × 70%). Application of the act and ordinance resulted in the assessed value of all real property on the list being $549,762,456. Thus, the assessments on the list of October 1, 1978 amounted only to 43.5 percent of the true and actual value of all real property in the city. As stated previously, personal property was assessed at 70 percent of its true and actual value.

(footnote continued from preceding page)

(3) Notice of the amounts of each of said phased assessments over said five (5) year period, shall be delivered to each taxpayer of residential• real property simultaneously with the notice of the October 1, 1978 assessment, and simultaneously with each of the succeeding four (4) annual assessment notices.

Enacted by the Board of Aldermen, October 4, 1978.
Approved by the Mayor, October 11, 1978.
Operative and in effect, October 19, 1978.

Attest:
WILLIAM JONES
City/Town Clerk"

• The word "residential" was deleted by an amendment "An Ordinance Amending a Previous Ordinance Concerning Staged Increases in Certain Real Property Tax Assessments."

Because the act and ordinance resulted in a reduction in the grand list in excess of $335,000,000, the tax rate for both real and personal property in the city for the fiscal year beginning July 1, 1979 was approximately 66.5 mills as opposed to approximately 47.3 mills.[8] To the extent that the grand list decreases, the mill rate must increase for a constant revenue to be produced.

Both UI and the Water Co. own real and personal property located in New Haven; the Gas Co. owns personalty only. The court below found that, assuming the board of aldermen of the city would not make any substantial changes in the 1979 budget or in the rate of 66.5 mills proposed by the board of finance of the city, the UI would pay $1,500,000 more in taxes during the first year of the phase-in than it would without the phase-in; the Water Co. would have to pay an additional $184,000 in taxes, and the Gas Co., $106,000. Because these taxpayers are affected in a pecuniary manner, their standing to bring the instant action is clear. *Bell* v. *Planning & Zoning Commission,* 174 Conn. 493, 498, 391 A.2d 154 (1978); *Atwood* v. *Regional School District No. 15,* 169 Conn. 613, 617, 363 A.2d 1038 (1975). See also Practice Book, 1978, § 390 (a).

The trial court held both § 12-62a (e) of the General Statutes, which codifies Public Acts 1978, No. 78-256, §3, and the ordinance unconstitutional under the equal protection provisions of both the state and federal constitutions. We will consider the constitutionality of the act and ordinance under both constitutions simultaneously because these provisions have a like meaning and impose similar

---

[8] We note that the trial court's memorandum of decision incorrectly states ".0665" mills and ".0473" mills; however, it is clear that the court meant 66.5 mills and 47.3 mills.

constitutional limitations. *Leech* v. *Veterans' Bonus Division Appeals Board,* Conn. (41 Conn. L.J., No. 24, pp. 1, 2) (1979); *Caldor's, Inc.* v. *Bedding Barn, Inc.,* Conn. (40 Conn. L.J., No. 41, pp. 10, 14) (1978); *Miller* v. *Heffernan,* 173 Conn. 506, 509, 378 A.2d 572 (1977), appeal dismissed, 434 U.S. 1057, 98 S. Ct. 1226, 55 L. Ed. 2d 758 (1978); *Horton* v. *Meskill,* 172 Conn. 615, 639, 376 A.2d 359 (1977); *Kellems* v. *Brown,* 163 Conn. 478, 485, 313 A.2d 53, appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1972).

I

In determining whether the act and ordinance constitute a denial of equal protection of the laws, we first consider the standard to be applied. The plaintiffs claim that the phase-in act and ordinance violate the equal protection clauses of the United States and Connecticut constitutions because: (1) they provide for "systematic and intentional underassessment" of certain property within a class of like property; and (2) the classifications resulting from the act and ordinance are "arbitrary and irrational." Thus, it appears that the plaintiffs are urging us to apply either of the above two standards when determining the constitutionality of the act and ordinance.

Where legislation, such as the phase-in act and ordinance, which neither contains a suspect classification nor impinges on a fundamental right is challenged on equal protection grounds, we have stated that the plaintiff to prevail must establish that the statutory classification is without rational basis. *Waterbury Motor Lease, Inc.* v. *Tax Commissioner,* 174 Conn. 51, 60, 381 A.2d 552 (1977); *Miller* v. *Heffernan,* supra, 509; *Kellems* v. *Brown,* supra, 486. We have explained the "rational basis" test numerous times in

the past: The classifications must be reasonable and rest upon " 'some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415, 40 S. Ct. 560, 64 L. Ed. 989 [(1920)]." *Miller* v. *Heffernan,* supra, 510; *Kellems* v. *Brown,* supra, 490; *First Federal Savings & Loan Assn.* v. *Connelly,* 142 Conn. 483, 491, 115 A.2d 455, appeal dismissed, 350 U.S. 927, 76 S. Ct. 305, 100 L. Ed. 811 (1955).

Recently, in the context of regulation of economic activity, we described the "rational basis" test in the following manner: "[A]n act regulating economic activity must bear a reasonable relationship to a proper legislative purpose in a manner that is neither arbitrary nor discriminatory. *Carroll* v. *Schwartz,* 127 Conn. 126, 130, 14 A.2d 754 (1940) . . . . The constitutional issue is whether legislative classifications or discriminations bear 'a rational relationship to a legitimate state end and [are] based on reasons related to the pursuit of that goal.' *Gentile* v. *Altermatt,* 169 Conn. 267, 295, 363 A.2d 1, appeal dismissed, 423 U.S. 1041, 96 S. Ct. 763, 46 L. Ed. 2d 631 (1976)." *Caldor's, Inc.* v. *Bedding Barn, Inc.,* supra, 14.

The United States Supreme Court has applied the "rational basis" test to legislation involving taxation. *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16, reh. denied, 411 U.S. 959, 93 S. Ct. 1919, 36 L. Ed. 2d 418 (1973) ("[t]he constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest"). Id., 55. Further, that court has a long history of applying the "rational basis" test to such

legislation. See, e.g., *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527, 79 S. Ct. 437, 3 L. Ed. 2d 480 (1959) (ad valorem tax on contents of warehouses except merchanise of nonresidents if held in storage warehouse for storage only); *Louisville Gas & Electric Co.* v. *Coleman,* 277 U.S. 32, 37, 48 S. Ct. 423, 72 L. Ed. 770 (1928) (tax imposed on the filing of a mortgage except mortgages executed to building and loan associations); *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 509, 57 S. Ct. 868, 81 L. Ed. 1245 (1937) (tax on certain employers requiring them to pay a certain percentage of their monthly payrolls into Unemployment Compensation Fund); *Air-Way Electric Appliance Corporation* v. *Day,* 266 U.S. 71, 85, 45 S. Ct. 12, 69 L. Ed. 169 (1924) (franchise fee charged by the state of Ohio against a foreign corporation for the privilege of exercising its franchises in Ohio); see also *Rast* v. *Van Deman & Lewis Co.,* 240 U.S. 342, 357, 36 S. Ct. 370, 60 L. Ed. 679 (1916) (tax on offering with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums). Even treatise writers have set forth the "rational basis" test as being applicable to legislative action in the area of taxation. Tribe, American Constitutional Law (1978) § 16-5, p. 1000; see also Nowak, Rotunda & Young, Constitutional Law (1978), pp. 361-62.

The plaintiffs rely primarily on *Sunday Lake Iron Co.* v. *Wakefield,* 247 U.S. 350, 38 S. Ct. 495, 62 L. Ed. 1154 (1918) (a two-page opinion); *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments,* 284 U.S. 23, 28-29, 52 S. Ct. 48, 76 L. Ed. 146 (1931); *McCarthy* v. *Jones,* 449 F. Sup. 480 (D. Ala. 1978); and *Louisville & Nashville R. Co.* v. *Public Service Commission of Tennessee,* 249 F. Sup. 894, 899, 902 (D. Tenn. 1966), aff'd, 389 F.2d 247 (6th Cir.

1968); to support the "systematic and intentional underassessment" standard. The terms "systematic and intentional underassessment" appear in each of the above cases. In at least two cases, however, in which the United States Supreme Court has cited *Sunday Lake Iron Co.*, supra, it specifically has employed the "rational basis" test without indicating that it was adopting a new test. *Allied Stores of Ohio* v. *Bowers,* supra, 527; *Ohio Oil Co.* v. *Conway,* 281 U.S. 146, 160, 50 S. Ct. 310, 74 L. Ed. 775 (1930). Likewise, at least two cases citing *Cumberland Coal Co.*, supra, have employed the rational basis test. *Liggett Co.* v. *Lee,* 288 U.S. 517, 533, 53 S. Ct. 481, 77 L. Ed. 929 (1933); *Lawrence* v. *State Tax Commission of Mississippi,* 286 U.S. 276, 283, 52 S. Ct. 556, 76 L. Ed. 1102 (1932). Simply because we are confronted with a case involving the assessment value of property for the purposes of taxation is no reason to create a new, distinct test. The lower federal court cases and state cases cited by the plaintiffs do not convince us to the contrary.

The plaintiffs would have us attach to the words "systematic and intentional" a pejorative meaning which they do not necessarily bear. Presumably whenever the legislature creates classifications (i.e., exemptions) in taxation legislation it intends to include certain taxpayers in one group and to exclude those not so included. This would be systematic and intentional; yet, it would not be per se unconstitutional.

Although we follow only the rational basis test, we do point out that even under the test of constitutionality urged by the plaintiffs, the act and ordinance are constitutional. Under that test, systematic and intentional underassessment of certain property *within a class of like property* is what is

prohibited. Realty and personalty are not part of a class of like property. Neither are realty which has appreciated and that which has not.

II

A

In part I of this opinion we briefly have mentioned some of the applicable principles in determining the constitutionality of a statute. "Where legislation neither containing a suspect classification nor impinging upon a fundamental right is challenged on equal protection grounds, the burden is on the complaining party to establish that the statutory distinction is without rational basis. *Horton* v. *Meskill* [172 Conn. 615, 640, 376 A.2d 359 (1977)]; *Kellems* v. *Brown,* 163 Conn. 478, 486, 313 A.2d 53, appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 [(1973)]." *Miller* v. *Heffernan,* supra, 509. A classification is allowable if it bears a reasonable relationship to a legitimate purpose of governmental action. *Bassett* v. *Rose,* 141 Conn. 129, 134, 104 A.2d 212 (1954).

"That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others . . . these are among the commonplaces of taxation and of constitutional law." *Nashville, Chattanooga & St. Louis Ry.* v. *Browning,* 310 U.S. 362, 368, 60 S. Ct. 968, 84 L. Ed. 1254 (1940). "A legislature is not bound to tax every member of a class or none." *Carmichael* v. *Southern Coal & Coke Co.,* supra, 509. "This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation." Id.

Further, a state, in exercising its taxing power, "is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." *Allied Stores of Ohio* v. *Bowers,* supra, 527. "As long as some *conceivable* rational basis for the difference exists, 'a classification is not offensive merely because it is not made with mathematical nicety.' *Karp* v. *Zoning Board,* 156 Conn. 287, 299, 240 A.2d 845 [(1968)]." *Miller* v. *Heffernan,* supra, 512. (Emphasis added.) No scheme of taxation has been devised which is completely free of all discriminatory impact. *San Antonio Independent School District* v. *Rodriguez,* supra, 41. " 'The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . .' *Madden* v. *Kentucky,* 309 U.S. 83, 87-88 [60 S. Ct. 406, 84 L. Ed. 590] (1940)." *San Antonio Independent School District* v. *Rodriguez,* supra, 40-41.

The burden on one attacking the constitutionality of a statute is great. There is a presumption of constitutionality which attaches to a statutory enactment; the burden which rests upon a party asserting its invalidity is to establish that it is unconstitutional beyond a reasonable doubt. *Society for Savings* v. *Chestnut Estates, Inc.,* 176 Conn. 563, 569,

A.2d (1979); *Engle* v. *Personnel Appeal Board,* 175 Conn. 127, 134, 394 Ad.2d 731 (1978); *State* v. *Warren,* 169 Conn. 207, 217, 363 A.2d 91 (1975); *Wilson* v. *Connecticut Product Development Corporation,* 167 Conn. 111, 114, 355 A.2d 72 (1974); *Kellems* v. *Brown,* supra. "It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts *at the time the law was enacted* must be assumed. *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78 [31 S. Ct. 337, 55 L. Ed. 369 (1911)]. It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety." *Rast* v. *Van Deman & Lewis Co.,* supra, 357. (Emphasis added.) See also *McGowan* v. *Maryland,* 366 U.S. 420, 425-26, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961); *Carmichael* v. *Southern Coal & Coke Co., supra,* 509.

"Courts in passing upon the validity of a legislative act do not feel justified in declaring it void unless there is a clear and unequivocal breach of the constitution. . . . We approach the question with great caution, examine it with infinite care, make every presumption and intendment in favor of validity, and sustain the act unless its invalidity is, in our judgment, beyond a reasonable doubt." *Kellems* v. *Brown,* supra, 486, quoting *Edwards* v. *Hartford,* 145 Conn. 141, 145, 139 A.2d 599 (1958). "Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement

to negative every conceivable basis which might support it." *Madden* v. *Kentucky,* 309 U.S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590 (1940); *Waterbury Motor Lease, Inc.* v. *Tax Commissioner,* supra, 60-61; *Kellems* v. *Brown,* supra, 487-88. "Only by faithful adherence to this guiding principle of judicial review of legislation [presumption of constitutionality] is it possible to preserve to the legislative branch its rightful independence and its ability to function." *Carmichael* v. *Southern Coal & Coke Co.,* supra, 510.

B

Finally, we consider whether there is any conceivable basis which might support the act and ordinance. It cannot be assumed that the legislature could not have reasonably concluded that by the coincidence of §§ 12-62 (revaluation required every ten years) and 12-62a (b) (uniform assessment rate of 70 percent) of the General Statutes numerous owners of real property might have been faced with a dramatic and sudden increase in taxes. Because of the coincidence of these statutes, not only is appreciation in realty which accrued over a period of years being compressed into a single revaluation, but also assessment is imposed at a uniform rate of 70 percent of true and actual value (a rate which is higher than that previously imposed at least by the city). Perhaps to ameliorate the potential hardship and deleterious consequences on the social structure of certain communities that the above statutes might impose—for example, numerous foreclosures—the legislature enacted § 3 of Public Acts 1978, No. 78-256. This is a legitimate purpose for governmental action. Indeed, "[i]t is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury but obstacles to a greater public welfare." *Rast* v. *Van Deman & Lewis Co.,* supra, 357.

Having determined that the purpose of the act and ordinance is a legitimate one, we now examine the classifications drawn by the act and ordinance to determine if they invalidate the legislation. The parties have delineated three distinct classifications contained in the act and the ordinance: first, municipalities in which revaluation has resulted in an increase of no less than 30 percent in the total assessed value of real property over the previous year's total real property assessment as opposed to municipalities in which the increase is less than 30 percent; second, real property as opposed to personal property; and third, real property having increased assessments as opposed to real property having no increase or having a decrease in assessment. The question is whether these classifications have a rational basis. We need to examine each to see if any state of facts reasonably can be conceived to sustain it.[9]

As to the *first* classification, the trial court indicated in its memorandum of law that "[t]here seems to be no particular reason for . . . the designation of 30% as the dividing line." We agree that the 30 percent figure is arbitrary; however, " 'when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.' *Louisville Gas & Electric Co.* v. *Coleman,* 277 U.S. 32, 41, 48 S. Ct. 423, 72 L. Ed. 770 [1928]." *Gentile* v. *Altermatt,*

[9] "A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action." *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 510, 57 S. Ct. 868, 81 L. Ed. 1245 (1937).

169 Conn. 267, 297, 363 A.2d 1, appeal dismissed, 423 U.S. 1041, 96 S. Ct. 763, 46 L. Ed. 2d 631 (1976). "[A]ll laws, especially those in the tax area, are necessarily dotted with such fine distinctions. 'It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of infancy terminate and the status of legal competency is assumed.' *Carmichael* v. *Southern Coal & Coke Co.*, supra, 510." *Miller* v. *Heffernan*, supra, 512. "[I]n every instance where a line must be drawn or a cutoff established there are those who fall directly on either side. This is but one of the vagaries of life to which we accustom ourselves and which we accept in our daily affairs, but we cannot, for this reason, find the act unreasonable in its purpose and overall effect." *Gentile* v. *Altermatt*, supra, 297-98. If a conceivable rational basis exists for the distinction, then the classification passes constitutional muster.

Several rational bases are conceivable for the classification regarding the 30 percent increase in real property assessments which triggers the act and ordinance. This percentage increase requirement ensures that there be no deviation from the 70 percent assessment rate imposed by § 12-62a (b) of the General Statutes unless there is sufficient overall impact in terms of increased assessment to justify the legislative remedy made available by the act. Additionally, municipalities not having the threshold increase of 30 percent are prevented from incurring the administrative costs of implementing a phase-in program; the use of the act is confined to those municipalities in which the potential of significantly enlarged tax burdens on real property owners or the possible disruption of the real estate market is sufficiently substantial to justify the administrative costs of the phase-in program. Further, the requirement of a 30 percent increase helps ensure that the phase-in process is

equitable. Where such a city-wide problem does not exist, and the overall real property assessments do not necessitate a phase-in of assessment, the act cannot be used solely to benefit selected individuals or for other political purposes.

As to the *second* classification, the real property-personal property distinction, a conceivable rational basis likewise exists. The legislature may have drawn this line because it considered that there was a potential for a sudden and dramatic increase in the assessment of realty because revaluation of such property for assessment purposes may occur at intervals as far apart as ten years. General Statutes § 12-62. The previous revaluation of a piece of real property revalued in 1978 may have occurred in 1968. The legislature may well have feared that although the appreciation in the value of that property may have been gradual over the years, the cumulative appreciation may have been so substantial that when reflected in the subsequent assessment, forced sales, foreclosures, and other conceivable hardships might result. Such a dramatic increase in assessment may have been thought not to exist for personal property which is revaluated annually. With annual revaluation there would be no cumulative appreciation accruing over a period of years which would be compressed into one revaluation. The real property-personal property distinction certainly is not irrational.

Further, in light of what the legislature may have considered an already poor real estate market, it may have wanted to cushion an increased tax burden on real property owners during a revaluation year by having it shared by all property owners within a municipality. It is interesting to note that although the act extends to commercial, residential, industrial, and other real property, legislative history

reveals that homeowners were of special concern, and the act was to insulate them from at least some of the burden of revaluation. See, e.g., 21 H.R. Proc., pt. 10, 1978 Sess., pp. 4237-39; 4241-42; 4249; 4251-52; 4253.

The major thrust of the plaintiffs' argument appears to be against the *third* classification, that between real property which has appreciated in value and that which has not. The plaintiffs claim that this classification violates equal protection because, inter alia, "those whose real property has increased sufficiently in value will be subsidized by those owners of real property which has decreased, remained the same or increased less in value." Although such a "subsidy" may result from the act and ordinance, the classification does not constitute a denial of equal protection of the laws because of the existence of at least the following conceivable rational bases. To achieve the purpose of mitigating the burden of increased assessments of real property in a revaluation year, a logical distinction exists between pieces of realty which have appreciated since the prior revaluation and those which have not. The legislature might have reasonably believed that only owners of appreciated property potentially would face a significant "double barrel" tax impact resulting from the coincidence of the legislation involving mandatory periodic revaluation; General Statutes § 12-62; and that imposing a uniform assessment rate; General Statutes § 12-62a (b). Owners of unappreciated property would be in less need of protection from a sudden and dramatic increase in tax burden. Likewise, the distinctions between pieces of real property which have appreciated more than others are rational. Inasmuch as the phase-in formula is based on equal amounts of the increase of assessment being added to the prior assessment value for a maximum of five years, owners of realty who arguably receive

the greatest protection from a sudden, significant increase in assessment are precisely those who would otherwise be threatened with the greatest increase in assessment.

Moreover, the distinction between realty with an increased assessment and that without such an increase conceivably gives a municipality an administratively convenient and cost effective method to implement the phase-in program. Rather than applying a complex formula to all realty, it is more convenient and economical to apply that formula to realty with an increased assessment. Administrative convenience and expense in the measurement or collection of taxes provide justification for the difference in treatment among classes of taxpayers. *Carmichael* v. *Southern Coal & Coke Co.,* supra, 511; 16A C.J.S., Constitutional Law, § 490, p. 252.

The plaintiffs challenge this classification also on the ground that the phase-in legislation has the effect of prolonging inequities—those benefiting from the phase-in would be those who were underassessed previously. Although the phase-in act may result in what may be perceived as some continued temporary inequities that the mandatory periodic revaluation and uniform assessment rate were designed to ameliorate, it cannot be disputed that the legislature may proceed one step at a time to remedy a harm. "[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge* v. *Williams,* 397 U.S. 471, 486-87, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). Neither can the act be condemned because it imperfectly effectuates the legislature's goals. *San Antonio Independent School District* v. *Rodriguez,* supra, 51.

When the act and ordinance were enacted, the state and local legislators necessarily lacked precise information about future budgets, mill rates, and assessments. In retrospect, perhaps another mechanism or formula may have been more well-suited to achieve the goals sought by the legislature.[10] Whether the prescribed mode of taxation is wise, however, is not a matter before us. *Waterbury Motor Lease, Inc.* v. *Tax Commissioner,* supra, 62; *Bassett* v. *Rose,* 141 Conn. 129, 135, 104 A.2d 212 (1954); *Carroll* v. *Schwartz,* 127 Conn. 126, 130, 14 A.2d 754 (1940).

The plaintiffs have failed to sustain their burden of proving that the legislation is unconstitutional beyond a reasonable doubt. Thus, they have not overcome the presumption of constitutionality of the act and ordinance. We hold that the act and ordinance do not constitute a denial of equal protection of the laws, that they are constitutional, and that the trial court erred in its declaratory judgments holding them unconstitutional.

There is error, the judgment is set aside, and the case is remanded with direction to render judgment declaring that § 12-62a (e) of the General Statutes and the ordinance of the city of New Haven effective October 18, 1978, as amended effective January 2, 1979, are not in violation of the equal protection clauses of the United States or Connecticut constitutions.

In this opinion the other judges concurred.

---

[10] In fact, the legislature itself may have reconsidered the wisdom of the act inasmuch as it subsequently placed a moratorium on its implementation by municipalities that previously had not enacted phase-in ordinances. Public Acts 1979, No. 79-612 (f).

APPENDIX 2

NO. 16 73 40

THE UNITED
ILLUMINATING CO.

V.

CITY OF
NEW HAVEN ET AL.

NO. 16 80 80

NEW HAVEN
WATER COMPANY

V.

CITY OF
NEW HAVEN ET AL.

NO. 16 80 81

THE SOUTHERN
CONNECTICUT
GAS COMPANY

V.

CITY OF
NEW HAVEN ET AL.

SUPERIOR COURT
JUDICIAL DISTRICT
OF NEW HAVEN AT
NEW HAVEN
MAY 8, 1979

MEMORANDUM OF DECISION

The plaintiffs in these three cases are The United Illuminating Co., the New Haven Water Company and The Southern Connecticut Gas Company, all public utilities which own property in the City of New Haven. The defendants are the City of New Haven, Martin J. Griffin and Edward Clifford. The defendants Griffin and Clifford are the tax collector and tax assessor, respectively, of the defendant City of New Haven. The three plaintiffs are all asking the court to enter judgments declaring that General Statutes § 12-62a (e) is unconstitutional; that an ordinance adopted pursuant to the statute by the City of New Haven is also unconstitutional, and requesting certain injunctive relief. While each case was brought separately, by agreement of all parties the three cases have been consolidated for trial purposes.

Section 12-62 of the General Statutes requires the tax assessors of all towns and cities commencing October 1, 1978 to revalue all real property for assessment no later than ten years following the last preceding revaluation and at least once every ten years thereafter. Since real property in New Haven had not been revalued since 1964 the defendant tax assessor revalued all real property in the City of New Haven as of October 1, 1978. For many years prior to 1978 the City of New Haven assessed all property at a rate of 60% of true and actual value, but in accordance with § 12-62a (b) of the General Statutes, the City was required to assess all property on the list of October 1, 1978 at a uniform rate of 70% of present true and actual value.

The 1978 General Assembly passed Public Act 78-256, which is now incorporated as paragraph (e) of § 12-62a of

the General Statutes. This act was proposed late in the legislative session without having the benefit of a public hearing and was signed by the Governor on May 1, 1978.

The basic issue raised by the plaintiffs in these cases is their claim that § 12-62a (e) is unconstitutional in that it violates Article First, §§ 1 and 20 of the Constitution of the State of Connecticut and the Fourteenth Amendment to the Constitution of the United States. This statute provides as follows:

> "Sec. 12-62a. *Uniform assessment date and rate. Exception to uniform rate in year of revaluation. Deferment of increase in assessed value allowed.* . . . (e) Any municipality may, with respect to the assessment list in such municipality in a year in which a revaluation becomes effective, as required under section 12-62, provided such revaluation has resulted in an increase in the total assessed value of all real property on the assessment list in the year immediately preceding such revaluation of no less than thirty per cent of such total assessed value, commencing with any such assessment list for 1977, by vote of its legislative body and in the manner provided in this subsection, defer all or any part of the amount of such increase in the assessed value of real property included in the assessment list in the year such revaluation becomes effective, provided in the year such revaluation becomes effective and in any succeeding year in which such deferment is allowed by such municipality, the assessed value of such real property in the year immediately preceding revaluation shall be increased in such equal amounts in each of such years that the assessed value of such real property in the last year of such deferment, but

in no event later than the fourth year following the year of such revaluation, shall be no less than the assessed value applicable to such property in the year of the revaluation except for deferment of such increased assessment in accordance with this subsection."

Section 12-62a (e), (hereinafter referred to as the Act), allows a municipality which revalues real property and as a result of the revaluation total real property assessments increase by at least 30% over the previous year's assessments, by vote of its legislative body, to defer all or a part of the increase in assessment on any piece of real property by phasing-in such increase in equal increments over a period not to exceed five years, commencing with the year of revaluation.

Acting pursuant to the Act the City of New Haven adopted an ordinance effective October 19, 1978 and an amendment thereto effective January 2, 1979 (hereinafter referred to as the Ordinance), which provides that any increase in the assessment of a piece of real property on the list of October 1, 1978 over the list of October 1, 1977, is to be divided into five equal increments and one of each increments is to be added or phased-in to the assessment list each year commencing October 1, 1978.

As a result of the revaluation by the defendant tax assessor the full, true and actual value of all real property in the City of New Haven was increased from $842,519,410 on the list of October 1, 1977 to $1,264,915,897 on the list of October 1, 1978, representing an increase of $422,396,487, or approximately 50%.

Had it not been for the provisions of the Act and the Ordinance the assessed value of all real property on the

list of October 1, 1978 would be $885,441,127 ($1,264,915,-897 x 70%). However, by the application of the Ordinance the assessed value of all real property on the list will be $549,762,456. Thus the Ordinance has the effect of reducing the total of all real property assessments on the list of October 1, 1978 by more than $335,000,000 below what the total would have been had all real property been assessed at 70% of its true and actual value. By the use of the Ordinance the assessments on the list of October 1, 1978 amount to only 43.5% of the true and actual value of all real property in the City of New Haven.

The procedure for establishing the budget and tax rate of the City of New Haven is set forth in § 58 of the City Charter. In this case, and in compliance with the Charter, the Board of Finance published on April 2, 1979 its estimate of the property tax revenue requirement of the City and the necessary mill rate to satisfy that requirement, and held a public hearing thereon within seven days of publication. The Board of Finance estimated that the City would need to collect $51,243,687 by way of the property tax, and allowing for a collection rate of 93.18%, the total revenue sought to be collected would be $54,994,229. By the time the consolidated trial of these cases was completed the Board of Finance had submitted this estimate of property tax revenues needed, and its recommended tax rate of .0665 mills to produce this revenue, to the Board of Aldermen. That body is now required to publish the submission by the Board of Finance, hold a public hearing thereon, adopt a budget, and set a tax rate. In the event that the Board of Aldermen fails to act by June 4, 1979, then the appropriations and tax rate recommended by the Board of Finance become final. The tax bills which will then be sent out to all taxpayers in the City of New Haven are

payable in two installments, on July 1, 1979 and January 1, 1980.

By its terms the Act, and consequently the Ordinance, applies only to assessments on real property. Personal property is still required to be assessed at 70% of its true and actual value while real property is assessed at varying rates up to 70% of true and actual value. In order for an owner of real property to have his property assessed at less than 70% of its true and actual value as a result of the application of the Act and Ordinance, it is necessary that his 1978 assessment at 70% of true and actual value be higher than his 1977 assessment at 60% of true and actual value. Should the 1978 assessment be higher than the 1977 assessment then one-fifth of the difference between the two is added to the 1977 assessment and this figure is the 1978 assessment. Under the terms of the Ordinance, for each of the next four years an additional one-fifth of the original difference is added to the assessment so that on the 1982 list the real property will then be assessed at 70% of true and actual value, as determined by the revaluation conducted in 1978.

Since assessments are directly related to true and actual value the effect of the Act and Ordinance is that the greater the increase in true and actual value between the last time the property was valued and the 1978 revaluation, the smaller the percentage of true and actual value at which the particular piece of real property will be assessed from 1978 through 1981. This results in wide variations between different pieces of real property with respect to the percentage of true and actual value at which they are assessed and taxed. Any property which declined in value and therefore declined in assessment between the lists of 1977 and

1978 would thus be assessed at 70% of its value, while another property which increased in value so greatly that its 1978 assessment at 70% would be 300% higher than its 1977 assessment, would be assessed, as a result of the phase-in prescribed by the Act and Ordinance, at only 26% of its value. The evidence indicates that some property has increased in value to the extent that it will be assessed at less than 20% of its true and actual value. Since all taxpayers are taxed by multiplying the same mill rate by the assessment the phase-in can result in real properties of equal values, as determined by the 1978 revaluation, receiving substantially different tax bills, and in fact, can result in owners of certain real property of lesser value paying more in taxes than owners of other real property which has been found to have a substantially higher true and actual value.

Another result of the phase-in prescribed by the Act and Ordinance is the effect on the taxes which the owners of all property must pay. As previously indicated, the implementation of the phase-in results in a reduction of the 1978 grand list in excess of $335,000,000 or more than one-third of a billion dollars. The effect of this huge reduction is to cause the tax rate for the fiscal year beginning July 1, 1979 to be approximately the recommended rate of .0665 mills rather than a rate of approximately .0473 mills. As the grand list goes down the tax rate must go up to produce the revenue estimated as needed to be raised through the property tax. The effect on the owners of personal property, all of which is assessed at 70% of its true and actual value, is obvious.

In order to determine the impact on these particular plaintiffs it is necessary to make certain assumptions with

respect to future budgets and mill rates. Proceeding on what appears to be the reasonable assumption that the Board of Aldermen will not make any substantial changes in the 1979 budget or mill rate proposed by the Board of Finance, the Act and Ordinance will cause the plaintiff The United Illuminating Company, to pay $1,500,000 more in taxes during the first year of the phase-in than it would have paid without the phase-in. For the subsequent three years the assumptions which must be made in order to determine the amount of the additional tax to be paid become more unreliable because it is necessary to estimate future budgets and mill rates, but it is clear that also in those years the tax burden will be higher because of the phase-in, only the precise amount is uncertain.

Utilizing the same process with respect to the plaintiffs New Haven Water Company and The Southern Connecticut Gas Company, in the first year of the phase-in, those plaintiffs will be required to pay additional taxes of $184,000 and $106,000 respectively. As with The United Illuminating Company, for the subsequent three years of the phase-in period it is certain that the taxes of these two plaintiffs will be higher, although the precise amount of the extra tax burden cannot be precisely determined.

The claim of the plaintiffs with respect to the alleged unconstitutionality of the Act and Ordinance is that they violate the provisions of Article First, Sections 1 and 20 of the Constitution of the State of Connecticut and the Fourteenth Amendment to the Constitution of the United States in that they create an arbitrary and irrational classification of property for taxation purposes, resulting in discriminatory rates of tax assessment for similar properties, and the systematic and intentional undervaluation for tax

purposes of certain pieces of real property within the City of New Haven. In essence, the plaintiffs are alleging a violation of the equal protection clause of the state and federal constitutions.

The law is clear that the equal protection clauses of the Constitution of the State of Connecticut have the same meaning and effect as the similar clause in the Fourteenth Amendment to the Constitution of the United States and therefore may be treated together. *Miller* v. *Heffernan,* 173 Conn. 506, 509 (1977); *Horton* v. *Meskill,* 172 Conn. 615, 639 (1977), and *Kellems* v. *Brown,* 163 Conn. 478, 485.

The defendant correctly points out that one who claims that a particular statute is unconstitutional has a heavy burden of proof.

> "It is well settled that a plaintiff who attacks a statute on constitutional grounds has no easy burden. As this court said in Adams v. Rubinow, 157 Conn. 150, 152-53, 251 A.2d 49: 'Because of the separation of powers, one claiming that a legislative enactment is invalid on the ground that it is unconstitutional must establish its invalidity on that ground beyond a reasonable doubt. Hardware Mutual Casualty Co. v. Premo, 153 Conn. 465, 470, 217 A.2d 698. . . . [W]here a statute reasonably admits of two constructions, one valid and the other invalid on the ground of unconstitutionality, courts should adopt the construction which will uphold the statute even though that construction may not be the obvious one. Carilli v. Pension Commission, 154 Conn. 1, 8, 220 A.2d 439; Ferguson v. Stamford, 60 Conn. 432, 447, 22 A. 782; Wilton v. Weston, 48 Conn. 325, 338. Of course, the fact that

> the plaintiffs chose to request a declaratory judgment, upon a stipulation of facts, in nowise changes or relieves them of the burden of proof resting on them. Hardware Mutual Casualty Co. v. Premo, supra, 472, 473.' To like effect we said in Edwards v. Hartford, 145 Conn. 141, 145, 139 A.2d 599: 'Courts in passing upon the validity of a legislative act do not feel justified in declaring it void unless there is a clear and unequivocal breach of the constitution. . . . We approach the question with great caution, examine it with infinite care, make every presumption and intendment in favor of validity, and sustain the act unless its invalidity is, in our judgment, beyond a reasonable doubt.' " *Kellems* v. *Brown,* 163 Conn. 486.

Legislatures are allowed broad discretion in setting tax policies. "The latitude of discretion is notably wide in the classification of property for the purpose of taxation and granting of partial or total exemptions upon grounds of policy." *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412; *Kellems* v. *Brown,* supra.

However, the legislature, even in the exercise of the wide discretion which it has in the field of taxation, is limited by the constitutional restrictions of equal protection.

> "But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference

> having a fair and substantial relation to the object of the legislation.' " *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527.

The Equal Protection Clause is intended to prevent unjustifiable inequities of state action. It commands that "all persons similarly circumstanced shall be treated alike." *Horton* v. *Meskill,* supra, 646; *F. S. Royster Guano Co.* v. *Virginia,* supra, 415.

The Supreme Court of the State of Connecticut, in upholding the constitutionality of the state tax on dividends and capital gains, stated the law as follows:

> "This court has also used similar language in describing permissible classification. 'The legislature has a wide discretion in the classification of property for taxation and in granting exemptions. . . . The classification must be reasonable and not arbitrary and must be based upon a distinction which bears a fair and substantial relationship to the object of the legislation so that all who are similarly situated are treated alike.' First Federal Savings & Loan Assn. v. Connelly, 142 Conn. 483, 491, 115 A.2d 455, appeal dismissed, 350 U.S. 927, 76 S. Ct. 305, 100 L. Ed. 811; see also Consolidated Diesel Electric Corporation v. Stamford, 156 Conn. 33, 36, 238 A.2d 410.' " *Kellems* v. *Brown,* supra, 490.

In support of their claim that the Act and Ordinance allow the implementation of a systematic and intentional undervaluation for tax purposes of certain real property which they say fails to satisfy constitutional equal protection, the plaintiffs rely on several cases dealing with that type of attack.

> "The purpose of the equal protection clause of the fourteenth amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by expressed terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by State Officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." *Sunday Lake Iron Co.* v. *Wakefield,* 247 U.S. 350.

In a case decided by the Supreme Court of the United States which seems similar to the situation in the cases at bar the court found intentional discrimination and held it to be unconstitutional. *Cumberland Coal Co.* v. *Board of Revisions of Tax Assessments,* 284 U.S. 23. In that case the assessors valued all coal property at the same value per acre without regard to its location even though the location affected actual value. In language particularly appropriate to the cases before this court, the Supreme Court said:

> "In applying this principle, the fact that a uniform percentage of assigned values is used, cannot be regarded as important, if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as, for example, an acre) as the property of other owners which has an actual value admittedly higher. Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a dif-

ferent ratio to actual values when the latter are the same." *Cumberland Coal Co.* v. *Board,* 284 U.S. p. 29.

The defendants maintain that the "classification" created by the Act and Ordinance has a rational basis. The "class" which the legislature allegedly was attempting to create and to benefit is that group of owners of real property whose property values have appreciated and, consequently, whose assessments at 70% of full value have increased between October 1, 1977 and October 1, 1978. The central issue in these cases is whether that type of classification meets the constitutional standard that "a classification must be reasonable and not arbitrary and must be based upon a distinction which bears a fair and reasonable relationship to the object of the legislation so that all of those who are similarly situated are treated alike." *Kellems* v. *Brown,* supra, 490.

Despite assertions that the Act and Ordinance were intended to alleviate residential property owners, whose property has appreciated in value, from the burden of increased assessments, the legislation does not make that distinction. All classes of real property, industrial, commercial, and residential, are covered by the phase-in. Whether an individual real property owner benefits depends upon the extent of appreciation in value of his particular property. In fact, the evidence indicated that it is only those taxpayers whose real property assessment has increased at least 56.5% who will actually benefit by paying less taxes than they would have paid had the Act and Ordinance not been enacted.

The Supreme Court of the United States has stated that the classification created by the legislature must "rest upon

some ground of difference having a fair and substantial relation to the object of the legislation." *F. S. Royster Guano Co.* v. *Virginia,* supra, 415.

It is apparent that the classification created by the Act and Ordinance is not related to the use to which a particular piece of real property is put, or is it related to a taxpayer's financial needs and ability to pay as in *Miller* v. *Heffernan,* supra, or is it related to administrative convenience and expense in the collection or measurement of the tax, or to the encouragement of beneficial enterprises or depressed industry, all of which were mentioned as constitutionally permissible in *Carmichael* v. *Southern Coal and Coke Co.,* 301 U.S. 495.

The argument that the Act and Ordinance are an attempt on the part of the legislature and the City of New Haven to recognize and alleviate the recent rapid increase in residential property values is not convincing, since one who increases the value of his property through renovations, or even to the extent of constructing a building on a vacant lot which he has just purchased, becomes a member of the protected "class." And, as previously noted, the legislation is not restricted to residential real property.

In what appears to be an arbitrary provision, the Act allows only those municipalities, in the year in which a revaluation becomes effective and when the revaluation has resulted in an increase of no less than 30% in the total assessed value of real property over the previous years total real property assessments, to utilize the provisions of the Act. There seems to be no particular reason for either the designation of 30% as the dividing line, or for allowing it to be used only on a town-by-town rather than on an individual taxpayer basis. However, the effect of the 30%

threshold requirement on a town-by-town basis is to deprive individual taxpayers whose assessments have increased substantially from the opportunity to have their assessment increases phased-in, because the total real property assessments in their town do not increase by 30%, while in a town that meets the 30% requirement taxpayers with lesser increases are able to take advantage of the legislation.

In addition, since the comparison between the year of revaluation and the previous year is made only by comparing the actual assessment totals without regard to the fact that in the year of revaluation the town must assess at 70% of true and actual value, and the year before may have assessed at a rate of anywhere from 50% to 80% (see 1978 Connecticut State Register and Manual, p. 340-347), the Act is not uniform in its application on a town-by-town basis. A town which previously assessed at 50% of value and in the year of revaluation must assess at 70% will satisfy the 30% *increase* in total real property assessments even if total real property values should actually be *reduced* by 6%. On the other hand, a town which previously assessed at 80% and in the year of revaluation must assess at 70% would show a 12-½% decrease in total real property assessments if the true and actual value of all the real property in the town stayed the same. In order for that town to meet the 30% increase in real property assessments it would be necessary for total real property true and actual values to increase by 48.6%. Obviously, in a town which previously assessed at 70%, and continues to do so, an increase of 30% in full value will produce a 30% increase in assessments. Since the City of New Haven previously assessed at 60% the 30% assessment would be satisfied by an increase in total true and actual value of approximately 14.3%.

General Statutes § 12-62 requires each municipality to revalue the real property within the town at least every ten years. During the years between revaluations some real property will have increased in value and other decreased. Without revaluation those whose property has not increased will be bearing more of a share of the tax burden of the municipality than will those whose property has increased in value but whose assessments have not increased accordingly. The obvious purpose of revaluation is to correct the inequities which have developed. However, the implementation of the phase-in has the direct result of continuing the inequities after the assessor has performed his statutory duty of revaluation, and thus has officially demonstrated that the inequities exist. While one may recognize and accept that these inequities do gradually occur and cannot be corrected until there is a revaluation is does not seem that equal protection is being satisfied when the precise extent of the inequities is revealed by the revaluation and they are allowed to continue only because property values have increased. To adjust assessments and taxes so as to reflect appreciating and depreciating real property values is the reason for revaluation in the first place.

The court realizes that had the legislature decided to allow a municipality to assess all real property at a lower rate than personal property, or to assess all residential real property at a lower rate than other property, that legislation might well satisfy constitutional equal protection as a proper classification for tax purposes. However, the Act adopted by the 1978 General Assembly does not prescribe that type of differentiation. The fact that generally personal property is affected more adversely than real property is merely an incidental result of the legislation. Any owner

of real property, be it industrial, commercial, or residential whose assessment has increased by at least 56.5% will be benefited, and the greater the increase, the greater the benefit. Those owners of real property whose assessment did not increase by at least 56.5% and all of the owners of personal property must absorb the taxes which those who benefit do not pay. Obviously, one who pays taxes on a piece of real property assessed at 70% of its true and actual value will pay triple the taxes paid by the owner of real property of the same value but assessed at 23%. What areas of New Haven are in fact absorbing the taxes of those who benefit from the phase-in may be indicated by an exhibit introduced by the defendants which shows that the area of the city with the lowest percentage increase in assessments in the section known as "the Hill," which is recognized as one of the most economically depressed sections of the city.

The Supreme Court of Connecticut has recently had occasion to restate once again the law concerning legislative classification and equal protection of the laws.

> "The constitutional issue is whether legislative classifications or discriminations bear 'a rational relationship to a legitimate state end and [are] based on reasons related to the pursuit of that goal.' Gentile v. Altermatt, 169 Conn. 267, 295, 363 A.2d 1, appeal dismissed, 423 U.S. 1041, 96 S. Ct. 763, 46 L. Ed. 2d 631 (1976). 'The legislative act, moreover, may not establish classes that have no reasonable relation to any permissible, public purpose. This does not, of course, prevent the legislature from dealing differently with different classes of people. It means only that classifications must be based on natural and substantial

differences, germane to the subject and purpose of the legislation, between those within the class included and those whom it leaves untouched.' Tough v. Ives, 162 Conn. 274, 292-93, 294, A.2d 67 (1972); New Orleans v. Dukes, 427 U.S. 297, 303, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976)." *Caldor's, Inc., et al.* v. *Bedding Barn, Inc., et al.,* 40 C.L.J., No. 41, p. 14.

For all of the foregoing reasons the court concludes that the plaintiffs have sustained beyond a reasonable doubt their burden of demonstrating that § 12-62a (e) of the Connecticut General Statutes is unconstitutional as a violation of the equal protection of the laws guaranteed by Article First, Sections 1 and 20 of the Constitution of the State of Connecticut and the Fourteenth Amendment to the Constitution of the United States.

The plaintiffs have requested a judgment declaring the Act and Ordinance unconstitutional.

"The declaratory judgment procedure in Connecticut as provided by § 52-29 of the General Statutes and §§ 307-313 of the Practice Book is peculiarly well adapted to the judicial determination of controversies concerning constitutional rights and, as in these cases, the constitutionality of state legislative or executive action. As we have observed, '[t]he statute authorizing the Superior Court to render declaratory judgments is as broad as it well could be made.' Sigal v. Wise, 114 Conn. 297, 301, 158 A. 891. It antedated the Uniform Declaratory Judgments Act, it is broader in scope than that act and the statutes in most, if not all, other jurisdictions; Spector Motor Service, Inc. v. Walsh, supra; and '[w]e have consistently construed our statute and

the rules under it in a liberal spirit, in the belief that they serve a sound social purpose.' Connecticut Savings Bank v. First National Bank & Trust Co., 133 Conn. 403, 409, 51 A.2d 907. While the declaratory judgment procedure may not be utilized merely to secure advice on the law; Tellier v. Zarnowski, 157 Conn. 370, 373, 254 A.2d 568; or to establish abstract principles of law; Norwalk Teachers' Assn. v. Board of Education, 138 Conn. 269, 272, 83 A.2d 482; or to secure the construction of a statute if the effect of that construction will not affect a plaintiff's personal rights; Gannon v. Sanders, 157 Conn. 1, 9, 244 A.2d 397; . . ." *Horton* v. *Meskill,* supra, 626.

In order for the Court to render a declaratory judgment it is necessary that the four conditions prescribed by § 390 (formerly § 309) of the Practice Book be satisfied.

"Sec. 390. — Conditions.

The court will not render declaratory judgments upon the complaint of any person.

(a) unless he has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to his rights or other jural relations; or

(b) unless there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties; or

(c) where the court shall be of the opinion that the parties should be left to seek redress by some other form of procedure; or

(d) unless all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof."

(P.B. 1963, Sec. 309).

As indicated earlier, these plaintiffs are all affected in a pecuniary manner by the Act and Ordinance and therefore have standing. *Attwood* v. *Regional School District No. 15,* 169 Conn. 613, 617. The precise amount of the plaintiffs' loss over the four years of the phase-in cannot be determined with precision but it is clear that the loss to each will be substantial.

The defendants are proceeding to implement the Ordinance at the present time and therefore it is clear that there is an actual bona fide and substantial question or issue in dispute.

This Court is of the opinion that there is no other form of procedure by which the plaintiffs may seek redress. The type of issue presented by these cases has been considered many times in a declaratory judgment action. See *Gentile* v. *Altermatt,* 169 Conn. 267; *Lublin* v. *Brown,* 168 Conn. 212; *Kellems* v. *Brown,* supra; *Adams* v. *Rubinow,* 157 Conn. 150; *Lyman* v. *Adorno,* 133 Conn. 511; *Horton* v. *Meskill,* supra.

In accordance with the orders of notice issued by this court the plaintiffs have notified by publication all taxpayers of the City of New Haven that these actions are pending which satisfies the last requirement of § 390 of the Practice Book.

Accordingly, the court is of the opinion that these cases satisfy the statute and rules with respect to the rendition of

declaratory judgments. In addition, during argument counsel for the defendants conceded that these cases were appropriate matters for declaratory judgments.

The plaintiffs are requesting that the court issue a mandatory injunction requiring the defendant assessor to place on the tax list of October 1, 1978 all real property at not less than 70% of its true and actual value and also an injunction restraining the defendants from assessing or collecting taxes on the real and personal property of the plaintiffs in the City of New Haven, until the defendant assessor has placed on the list of October 1, 1978 all real property at not less than 70% of its true and actual value.

"Injunction is a harsh remedy . . . and when an equitable injunction is the specific relief claimed, it is incumbent upon the party seeking relief to allege facts showing irreparable damage and the lack of an adequate remedy at law." *Stocker* v. *Waterbury,* 154 Conn. 446, 449.

The defendants point out that the power of injunction is not used, except with great caution, to prevent a tax collector from performing his public duty. However, if the facts of a particular case warrant the extraordinary relief by way of injunction to restrain the collection of a tax, then such relief is permissible.

> "No court of equity will therefore allow its injunction to issue to restrain the collection of a tax, except where it may be necessary to protect the rights of the citizen whose property is taxed from irreparable injury, and when he has no adequate remedy by the process of law. 1 Spelling on Extraordinary Remedies (2d Ed.) pp. 535, 536; 2 Cooley on Taxation (3d Ed.) p. 1422;

1 High on Injunctions (4th Ed.) p. 498, § 524; 4 Dillon on Municipal Corporations (5th Ed.) p. 2786. Where an injury is of such a nature that it cannot be adequately compensated in damages, or cannot be measured by any pecuniary standard, it is irreparable. 'Whether damages are to be viewed by a court of equity as 'irreparable' or not depends more upon the nature of the right which is injuriously affected than upon the pecuniary measure of the loss suffered.' Robertson v. Lewis, 77 Conn. 345, 346, 59 Atl. 409." *New London* v. *Perkins,* 87 Conn. 229, 234.

"[I]t is a part of the wholesome policy of the law in its application to causes in this forum, to prevent an injury as well as to redress one, especially when the circumstances indicate essential wrong to the aggrieved party, which in its consequences is also likely to injuriously affect the public. Theoretically, as a general rule, chancery may not assume to exercise jurisdiction when there is adequate remedy at law. It does so practically, in numerous cases where the completeness of the legal remedy is disputed or doubtful; and sometimes also irrespective of that consideration when it is manifestly better to prevent the prepetration of a wrong which will be not only highly prejudicial to the party immediately threatened, but also directly or incidentally detrimental to the public." *Brainard* v. *West Hartford,* 140 Conn. 631, 636.

The claim by the defendants that injunctive relief is not warranted is not based on their contention that the Act and Ordinance are constitutional, for obviously if this court had concluded that the plaintiffs had not proven the unconstitutionality of the legislation, there would be no

need to consider any form of further relief. It is the assertion of the defendants that even if the Act and Ordinance are unconstitutional, the facts in these cases do not call for injunctive relief.

Injunctive relief in cases similar to the one at bar has been ordered in other jurisdictions. An assessment plan of a majority of the assessors in Springfield, Massachusetts under which real property was classified into six categories to be assessed at percentages of actual value ranging from 50% to 85%, and personal property was assessed at 85% of true and actual value, was found to be unconstitutional. The court granted injunctive relief, stating:

> "Indeed, the courts properly are always slow to grant injunctive relief in tax matters of this type except upon a very clear showing of violation of fundamental constitutional or statutory rights. . . . Upon the present record, however, the balance of public interest seems to us heavily in favor of granting injunctive relief. . . . Where every assessment has been made on a wrong basis, the defects in the scheme cannot be cured by the sporadic correction of individual assessments. . . . The illegal action . . . has resulted in litigation and apprehension of confusion. Far greater confusion, as well as injustice to the plaintiffs, will result if equitable relief is not granted. The plaintiffs and others similarly situated could be required to pay 1961 taxes in excess of any valid tax upon them as a condition precedent to any available relief by abatement before the Appellate Tax Board. . . . Their properties would be subject to excessive liens for taxes. . . . The public considerations are even more important. If the assessment scheme is not enjoined, the inevitable conse-

> quence will be a multiplicity of abatement applications and actions . . . creating unnecessary work for all concerned as well creating unnecessary work for all concerned as well as congestion in the courts and before the Appellate Tax Board. Because of this congestion and consequent delays, the remedies (to the extent available in such a situation) . . . would be cumbersome, slow, and, as a practical matter, wholly inadequate. . . . Fortunately, because of commendable cooperation by the parties, these cases have reached this court for decision very promptly after the board's adoption of the 1961 assessment scheme and before any substantial progress in the annual collection of taxes. We are of opinion that, in the circumstances, the practical and simple method of dealing with the situation is to enjoin execution of the unconstitutional assessment scheme and to declare it to be a nullity. Thus the way will be cleared for a wholly new assessment." *Bettigole* v. *Assessors of Springfield,* 178 N.E. 2d 10, 18.

It would seem that the type of fact situation confronted by the Massachusetts court in *Bettigole* is similar to that presented to this court, and the reasoning of that court would appear to be applicable equally to these cases.

To the same effect see *Larson* v. *State,* 534, P.2d 854; *Dore* v. *Kinnear,* 489 P.2d 898.

The Supreme Court of the United States has spoken on the subject of the issuance of an injunction in a case similar to the ones at bar:

> ". . . [W]e are of opinion that when a rule or system of valuation is adopted by those whose duty it is to

> make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power. Cummings v. National Bank, 101 U.S. 153, 157-58 (1879)."

The ramifications of the finding of unconstitutionality by this court go far beyond simply finding that the tax bills of these plaintiffs will be too high. The defendant assessor testified that there were approximately 18,000 pieces of real property in the City of New Haven and of these approximately 95% have increased in assessment between 1977 and 1978. Therefore, if injunctive relief is not ordered, 95% of the owners of the pieces of real estate in the city on the list of October 1, 1978 will receive tax bills on or about July 1, 1979 which are based on incorrect assessments computed through the use of an unconstitutional assessing procedure. Further, the illegal assessments have caused the total grand list of October 1, 1978 to be reduced by over $335,000,000, which causes the mill rate, which will be levied on all the taxable property in the city, to be approximately 19 mills higher than it properly should be.

If the requested injunctive relief is not given at this time and the final decision of the Supreme Court of Connecticut affirms this court and is rendered after collection of taxes based on the phased-in list of October 1, 1978 has begun, widespread inequities will result. Many taxpayers will have overpaid their taxes, others will have underpaid. Constitutional redistribution of the tax burden as well as tax collections will be extremely difficult and probably

impossible. Extensive litigation will result, involving not only these plaintiffs but many other taxpayers.

If injunctive relief is ordered and the defendants, in the computation of assessments and tax bills for the fiscal year commencing July 1, 1979, are forced to use an October 1, 1978 assessment list on which assessments reflect 70% of true and actual value of all real property, the result will be an increase in the assessments of the owners of 95% of all real property, an increase in the total grand list of over $335,000,000, a reduction in the projected mill rate to less than 50 mills, an increase in the taxes of those owners of real property whose assessments on the 1978 list increased more than 56.5%, a decrease in the tax bills of those owners whose assessments did not increase at least 56.5% and a decrease in the tax bills of all the owners of personal property and motor vehicles. The defendants have all of the data necessary to proceed utilizing a 70% assessment list.

The facts of these cases appear to the court to reflect a situation calling for equitable relief "when it is manifestly better to prevent the perpetration of a wrong which will be not only highly prejudicial to the party immediately threatened, but also directly or incidentally detrimental to the public." *Brainard* v. *West Hartford,* supra.

The injury to the plaintiffs and many other taxpayers of the City of New Haven is irreparable.

With respect to the burden of the plaintiffs to show that they have an inadequate remedy at law, the defendants point to General Statutes § 12-118 as an adequate remedy. This statute and Sections 12-110 through 12-117 deal with

the activities of the Board of Tax Review. That board handles two categories of complaints: that the assessor has overvaluated the property of the complainant, and that the property is not listed at the percentage of true and actual value which the assessors have established in accordance with law. The issue of overvaluation is not involved in these cases. The second category of complaints which the Board of Tax Review is authorized to handle would appear to have been eliminated by virtue of § 12-62a.

The plaintiff United Illuminating Company does not question the assessor's valuation of its property and therefore has not gone before the Board of Tax Review this year. That the plaintiffs New Haven Water Company and The Southern Connecticut Gas Company have in fact appeared before the Board making a claim of overvaluation of certain of their property is of no consequence. The appeal to the Board of Tax Review is a separate and distinct remedy and confined solely to the question of proper valuation and assessment. See *O'Brien* v. *Board of Tax Review,* 169 Conn. 129, 135; *State ex rel Eastern Color Printing Co.* v. *Jenks,* 150 Conn. 444, 451. This court finds that an appeal to the Board of Tax Review is an inadequate remedy for a taxpayer making the constitutional attack that the plaintiffs are making in these cases.

Injunctive relief is appropriate in these cases.

For all of the foregoing reasons judgment may enter in favor of the plaintiffs in the three cases before the court and the following orders may enter in each case:

1. It is adjudged and decreed as a declaratory judgment of the rights of the parties that General Statutes § 12-62a

(e) is unconstitutional in that it violates the provisions of Article First, Sections 1 and 20 of the Constitution of the State of Connecticut and the Fourteenth Amendment to the Constitution of the United States.

2. It is adjudged and decreed as a declaratory judgment of the rights of the parties that the Ordinance of the City of New Haven effective October 19, 1978, as amended effective January 2, 1979, is unconstitutional in that it violates the provisions of Article First, Sections 1 and 20 of the Constitution of the State of Connecticut and the Fourteenth Amendment to the Constitution of the United States.

3. A mandatory injunction may issue requiring the defendant assessor to place on the tax list of October 1, 1978, all real property at not less than 70% of its true and actual value in accordance with the provisions of General Statutes Sections 12-62a (a) and (b).

4. A permanent injunction may issue restraining the defendants from assessing or collecting taxes on property of the plaintiff in the City of New Haven until the defendant assessor has placed on the tax list of October 1, 1978, all property at not less than 70% of its true and actual value.

Judgment may enter accordingly.

William L. Hadden, J.

Filed May 8, 1979

APPENDIX 3

APPEAL NO. 9623

THE UNITED ILLUMINATING COMPANY VS. CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	SUPREME COURT OF THE STATE OF CONNECTICUT MARCH 26, 1980
NEW HAVEN WATER COMPANY VS. CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	SUPREME COURT OF THE STATE OF CONNECTICUT MARCH 26, 1980
THE SOUTHERN CONNECTICUT GAS COMPANY VS. CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	SUPREME COURT OF THE STATE OF CONNECTICUT MARCH 26, 1980

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that The United Illuminating Company, New Haven Water Company, and The Southern Connecticut Gas Company, plaintiffs in the above-entitled matters, which were consolidated for appeal to the Supreme Court of the State of Connecticut, Appeal No. 9623, hereby appeal to the Supreme Court of the United

States from the judgment of the Supreme Court of the State of Connecticut, released February 19, 1980, setting aside the judgment of the court below and declaring that § 12-62a (e) of the General Statutes of the State of Connecticut and the Ordinance of the City of New Haven, effective October 18, 1978, as amended effective January 2, 1979, implementing the statute, do not violate the Equal Protection Clause of the United States Constitution.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

THE PLAINTIFFS:

THE UNITED ILLUMINATING COMPANY

BY WIGGIN & DANA

By John W. Barnett
P.O. Box 1832
New Haven, Connecticut 06508
(203) 789-1511
— Its Attorneys —

NEW HAVEN WATER COMPANY AND THE SOUTHERN CONNECTICUT GAS COMPANY

BY TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Donald F. Keefe
P.O. Box 1936
New Haven, Connecticut 06509
(203) 789-0700
— Their Attorneys —

CERTIFICATE OF COMPLIANCE WITH RULE 33

This is to certify that a copy of the foregoing was served on the following, being all counsel of record, by depositing the same in a United States mail box, first class, postage prepaid, to Corporation Counsel, City of New Haven, 195 Church Street, New Haven, Connecticut 06510 on this the 26th day of March, 1980.

Donald F. Keefe

Attorney Donald F. Keefe

APPENDIX 4

NO. 16 73 40

THE UNITED ILLUMINATING COMPANY	SUPERIOR COURT
VS.	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	MARCH 26, 1980

NO. 16 80 80

NEW HAVEN WATER COMPANY	SUPERIOR COURT
VS.	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	MARCH 26, 1980

NO. 16 80 81

THE SOUTHERN CONNECTICUT GAS COMPANY	SUPERIOR COURT
VS.	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
CITY OF NEW HAVEN, EDWARD CLIFFORD, and MARTIN J. GRIFFIN	MARCH 26, 1980

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United Illuminating Company, New Haven Water Company, and The Southern Connecticut Gas Company, plaintiffs in the above-entitled matters, which were consolidated for appeal to the Supreme Court of the State of Connecticut, Appeal No. 9623, hereby appeal to the Supreme Court of the United States from the

judgment of the Supreme Court of the State of Connecticut, released February 19, 1980, setting aside the judgment of the court below and declaring that § 12-62a (e) of the General Statutes of the State of Connecticut and the Ordinance of the City of New Haven, effective October 18, 1978, as amended effective January 2, 1979, implementing the statute, do not violate the Equal Protection Clause of the United States Constitution.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

THE PLAINTIFFS:

THE UNITED ILLUMINATING COMPANY

BY WIGGIN & DANA

By John W. Barnett
P.O. Box 1832
New Haven, Connecticut 06508
(203) 789-1511
— Its Attorneys —

NEW HAVEN WATER COMPANY AND THE SOUTHERN CONNECTICUT GAS COMPANY

BY TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Donald F. Keefe
P.O. Box 1936
New Haven, Connecticut 06509
(203) 789-0700
— Their Attorneys —

CERTIFICATE OF COMPLIANCE WITH RULE 33

This is to certify that a copy of the foregoing was served on the following, being all counsel of record, by depositing the same in a United States mail box, first class, postage prepaid, to Corporation Counsel, City of New Haven, 195 Church Street, New Haven, Connecticut 06510 on this the 26th day of March, 1980.

Donald F. Keefe

Attorney Donald F. Keefe

APPENDIX 5

EFFECT OF CHANGES IN ASSESSMENT ON AMOUNT OF PROPERTY TAX

	Actual value	Assessed at 70%	Assessed at 10%
Property A	1000	700	100
Property B	2000	1400	200
Grand List	3000	2100	300
Budget	3000	3000	3000
Tax Rate (budget divided by grand list)	1	1.429	10
Tax on property A (assessed value multiplied by tax rate)	1000	1000	1000

If the budget for the year is $3,000, the change in assessment ratio will cause variations in the grand list and consequently in the tax rate, but the tax on Property A and Property B will be the same, regardless of the ratio at which they are assessed.

APPENDIX 6

CERTIFICATE OF COMPLIANCE WITH RULE 33

This is to certify that a copy of the foregoing was served on the following, being all counsel of record, by depositing the same in a United States mailbox, first class, postage prepaid, to Corporation Counsel, City of New Haven, 195 Church Street, New Haven, Connecticut 06510 on this the 16th day of May, 1980.

Donald F. Keefe

Attorney Donald F. Keefe

Supreme Court, U.S.
FILED
JUN 12 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1819

THE UNITED ILLUMINATING COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees,

NEW HAVEN WATER COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees,

THE SOUTHERN CONNECTICUT GAS COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM OF DEFENDANTS — APPELLEES

CHARLES G. ALBOM
Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8232
Counsel for Appellees

Of Counsel:
CLARINE NARDI RIDDLE
Deputy Corporation Counsel
City of New Haven
(203) 787-8234

SUBJECT INDEX

PAGE

Opinions Below 2

Jurisdiction 2

Question Presented 2

Statutes and Ordinances Involved 4

Statement of Case 5

No Substantial Federal Question is Presented..... 10

Conclusion 15

Certificate of Service 16

TABLE OF CITATIONS

Cases:

Allied Stores of Ohio, Inc. v. *Bowers,* 358 U.S. 552 (1959) 10, 11, 12

Baldwin v. *Fish and Game Commission of Montana,* 436 U.S. 371 (1978) 12

Carmichael v. *Southern Coal & Coke Co.,* 301 U.S. 495 (1937) 10, 13

City of Boston v. *Jackson,* 260 U.S. 309 (1922)..... 15

City of New Orleans v. *Dukes,* 427 U.S. 297 (1976)... 10, 12

County Board of Arlington County, Virginia v. *Richards,* 434 U.S. 5 (1977) 10

Dandridge v. *Williams,* 397 U.S. 471 (1970) 10, 12

Hodges v. *Snyder,* 261 U.S. 600 (1923) 15

Louisville Gas & Electric Co. v. *Coleman,* 277 U.S. 32 (1928) 10

Madden v. *Kentucky*, 309 U.S. 83 (1940) 11, 12

National Can Corp. v. *State Tax Commission of Maryland*, 220 Md. 418, 153 A. 2d 287, *appeal dismissed*, 361 U.S. 534 (1959) 11, 12, 13

Ohio Oil Co. v. *Conway*, 281 U.S. 146 (1930)..... 12

San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973) 10, 12, 13, 14

State Board of Tax Commissioners of Indiana v. *Jackson*, 283 U.S. 527 (1931) 12

Statutes:

28 U.S.C. 1257 (2) 2

Connecticut General Statutes, as amended:
Sec. 12-62, Periodic Revaluation of Real Estate.... 4, 5
Sec. 12-62a. Uniform Assessment Date and Rate. Exception to Uniform Rate in Year of Revaluation. Deferment of Increase in Assessed Value Allowed 4, 5
Sec. 12-62a(b) 4, 5
Sec. 12-62a(e) 4, 5, 6

Ordinance:

Ordinance, City of New Haven, "An Ordinance Providing for Staged Increases in Certain Real Property Tax Assessments" (October 19, 1978) 5

Treatise:

Tribe, American Constitutional Law (1978 ed.) Sec. 16-5, p. 1000 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1819

THE UNITED ILLUMINATING COMPANY

Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD AND MARTIN J. GRIFFIN,

Appellees,

NEW HAVEN WATER COMPANY,

Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD AND MARTIN J. GRIFFIN,

Appellees,

THE SOUTHERN CONNECTICUT GAS COMPANY,

Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD AND MARTIN J. GRIFFIN,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM OF DEFENDANTS — APPELLEES

The appellees, the City of New Haven, Martin J. Griffin, its Tax Collector and Edward Clifford, its Tax Assessor,[1] move this Court to dismiss the appeal filed by the appellant Companies[2] from the judgment of the Supreme Court of the State

[1]The appellees will hereinafter be referred to as the "City of New Haven" or "New Haven."

[2]The appellants will hereinafter be collectively referred to as the "Companies."

of Connecticut on the ground there is no substantial federal question presented or, in the alternative, to affirm the judgment below because, in view of previous decisions, the questions presented by the appellant Companies are so wanting in substance as not to need further argument.

Opinions Below

The opinion of the Supreme Court of Connecticut is reported at Conn. , A 2d , 41 Conn. L. J. No. 34 at 1 (February 19, 1980), (S.Ct. Conn.), and is reproduced in the Appendix to the Jurisdictional Statement at 1A-22A. The Memorandum of Decision of the Superior Court, Judicial District of New Haven, is unreported and is reproduced in the Appendix to the Jurisdictional Statement at 23A-50A.[3]

Jurisdiction

The judgment of the Supreme Court of the State of Connecticut was entered on February 19, 1980 (J.S. App. 1A). The notice of appeal was timely filed on March 27, 1980 (J.S. App. 51A), and the Jurisdictional Statement was filed on May 16, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

Question Presented

The Connecticut Legislature sought by statute to correct imbalances in municipal ad valorem practices theretofore existing. It mandated by statute that in municipalities where real estate assessments were based on valuations more than 10 years old that immediate revaluation be carried out by the assessor. The next precedent statute permitted assessors to use valuations of real estate as much as 19 years old. The Connecticut Legislature

[3]The Appendix to the Jurisdictional Statement will hereinafter be referred to as "J.S. App."

also mandated by statute that the same uniform percentage of value be applied to real and personal property to establish an assessment basis whereas previously real estate had been assessed at a percentage (60%) of value more favorable to it than that applied to personal property (70%). Both types of property were now to be assessed at 70% of value.

In the City of New Haven, the next previous general real estate revaluation had taken place 14 years before 1978. Real estate had been assessed previously at 60% of 1964 values and personal property at 70% of current value. In 1978, the City of New Haven carried out a general revaluation of real estate as the corrective statute required.

The corrective legislation aforesaid would, if given immediate whole force, have had the effect of compressing many years of inflation in real estate valuations into an immediate basis for tax and the added effect of increasing that basis by the simultaneous application of the higher (70%) percentage of value rather than the precedent 60%.

The legislature accordingly permitted municipalities which following revaluation would have a specified substantial percentage increase in the total real estate grand list[4] to phase-in the increase in assessments on real estate parcels in equal installments over a period of five successive years.

5% of the parcels of real estate in New Haven had not inflated in value from 1964 to 1978.

The plaintiffs attack the phase-in as costing them more in taxes than if the corrective statutes were to take immediate whole effect without phase-in application. They say that one of the parcels of real estate they own had not inflated in value and hence phase-in accords a benefit to other real estate owners not afforded them; that personal property which had been continu-

[4]Where the total real estate grand list inflated after revaluation by at least 30%.

ously up-dated in valuation did not benefit under phase-in and so was denied equal protection of the law.

It is probable that such burden of taxation as will be removed from real estate will devolve primarily on personal property.

The Supreme Court of Connecticut ruled against plaintiffs' claims. The Connecticut Supreme Court held that the legislature could rationally perceive that a significant state and social purpose was served by the phase-in provision and gradualism in corrective procedures; that giving immediate whole effect to the corrective procedures could be rationally conceived to be unduly harsh on home owners and to have an unwholesome social effect on an already poor real estate market; and that the appellants had not sustained their burden of proof by a showing to the contrary beyond a reasonable doubt as the decisions of this court required. Long established constitutional decisions of this court have held that the equal protection clause does not require that a state must choose between attacking every aspect of a problem or not attacking the problem at all; neither can legislation be condemned where it imperfectly effectuates a legislative goal. Is not the question raised by the appellants so plainly foreclosed by previous equal protection decisions of this court in the area of state taxation that they are wanting in substance and present no substantial federal question?

Statutes and Ordinances Involved

Section 12-62 of the Connecticut General Statutes which directs municipalities which used values more than ten (10) years old as a base for ad valorem municipal assessments of real estate to immediately update the values to reflex 1978 values and for periodic revaluation thereafter is reproduced at J. S. App. 4A, n. 4. Section 12-62a (b), which requires that all property, real and personal, be assessed for purposes of municipal property tax at a uniform rate of seventy per cent (70%) of true and actual value; Section 12-62a(e), which authorized certain municipalities to "phase-in," over a five (5) year period the in-

crease in assessed value of individual parcels of real property; and the Ordinance of the City of New Haven, "Providing For Staged Increases in Certain Real Property Tax Assessments," which implements the provisions of Section 12-62a(e) of the Connecticut General Statutes, are reproduced in the J. S. App. 4A-7A.

Statement of Case

1. Effective in 1978 the Connecticut Legislature directed the Tax Assessors in each municipality, including the City of New Haven, to revalue all *real* property within its jurisdiction no later than ten (10) years following the last preceding revaluation, (Conn. Gen. Stat. Sec. 12-62) and to assess that real property at a uniform rate of seventy per cent (70%) of its true and actual value. (See Conn. Gen. Stat. Sec. 12-62a(b)). This latter rate of assessment represented an increase of ten per cent (10%) over the previous rate of assessment authorized by the Connecticut Legislature and utilized by the City of New Haven during its last previous revaluation in 1964 (See J.S. App. 4A). Personal property within New Haven is revalued every year and is assessed at a uniform rate of seventy per cent (70%), consistent with state law. Id. The City of New Haven's ad valorem real and personal proprty tax, like all other municipalities in Connecticut, is imposed on the property's "assessed value." Thus, the Legislature both required a revaluation of real property for tax purposes plus an increased uniform rate of assessing such property's value; a "potentially . . . significant 'double barrel' tax impact" (J. S. App. 20A) on the owners of appreciated real property.

In 1978 the Connecticut Legislature enacted Public Act 78-256, Conn. Gen. Stat. Sec. 12-62a(e). It authorized the legislative body of a municipality, whose "revaluation has resulted in an increase in the *total* assessed value of *all real* property on the assessment list in the year immediately preceding such revaluation of no less than thirty per cent (30%) of such total assessed

value" (J. S. App. 5A, n. 6) (emphasis added), to allow unto *individual real* property owners a deferment of " 'all or any part' of the *increase* in assessment provided that the amount deferred is phased in in equal amounts over a period not to exceed five years from the year of revaluation" (J. S. App. 5A) (emphasis added), which, in the case of New Haven, is 1978; for the last revaluation in New Haven had been in 1964.

This "phase-in" was, of course, applicable only to real, and not personal, property and only to those pieces of real property whose revaluation had resulted in a higher assessment (J.S. App. 5A).

2. Pursuant to Sec. 3 of Public Act 78-256, Conn. Gen. Stat. 12-62a(e), the legislative body of the City of New Haven, the Board of Aldermen, enacted an Ordinance providing that any increased assessment on any real property as a consequence of revaluation "shall be divided into five (5) equal increments, and each of said increments shall be effective on each of the succeeding five list years, thereby successively increasing each such . . . real property assessment increase until the full [70%] assessment originally fixed in . . . 1978 is implemented" (J.S. App. 6A, n. 7), by 1982. The result of the City of New Haven's 1978 evaluation was that the true and actual value of all real property was $842,519,410 on October 1, 1977, and $1,264,915,897 on October 1, 1978, an increase of approximately 50 per cent (50%) (J.S. App. 7A). This result "activated" the provisions of Public Act 78-256, Conn. Gen. Stat. Sec. 12-62a(e), and the Board of Aldermen's Ordinance. Ninety-five per cent (95%) of the parcels of real property within the City increased in value and assessment, and were thus eligible for the "phase-in's" protection (J.S. App. 47A).

Not surprisingly, by reducing to one-fifth the increase in the assessed value of real property subject to taxation for 1978, the "phase-in" had statistical effects in New Haven. It resulted in an assessed value which was 43.5 per cent (rather than 70 per cent (70%) without the phase-in) of the true and actual value of all real property in New Haven (J.S. App. 7A). Con-

sequently, in order for the City to maintain adequate tax revenue, the *rate* of taxation increased (i.e. 66.5 mills with the phase-in rather than 47.3 mills without it) (J.S. App. 8A). Additionally, because the "phase-in" was not beneficial to that small percentage of real property whose value had not inflated since 1964 (1977 base), (5% of all real estate parcels) owners of such property were assessed at the full 70% uniform rate in 1978. And, of course, owners of personal property continued to be assessed at the full 70% uniform rate (J.S. App. 7A).

3. In March, 1979, the Companies, owners of real or personal property in New Haven, the major suppliers of heat, light and water, and all required to pay more taxes on their real and personal property in the first year of the "phase-in," than if phase-in were not in effect, sought declaratory and injunctive relief against the City of New Haven in the Superior Court for the Judicial District of Connecticut. They alleged that Public Act 78-256, and the Board of Aldermen's Ordinance implementing it, violated the Equal Protection Clause of the Connecticut Constitution and the Fourteenth Amendment to the Consitution of the United States (J.S. App. 24A).[5] The standard of review urged by the Companies was that the existence of "systematic and intentional undervaluation for tax purposes of certain pieces of real property" (J.S. App. 33A), rendered the challenged state statute violative of equal protection. The trial court granted unto the Companies the relief requested (J.S. App. 49A, 50A). The Supreme Court of Connecticut reversed. It did so on the ground that

> "Where legislation, such as the phase-in act and ordinance, which neither contains a suspect classification nor impinges on a fundamental right is challenged on equal protection grounds, we have stated that the plaintiff to prevail must establish that the statutory classification is without rational basis." (J.S. App. 9A) (See also J.S. App. 10A, 11A).

---

[5]It has long been recognized by the Connecticut Supreme Court that the equal protection clause in both constitutions "have a like meaning and impose similar constitutional limitations"; *See* J.S. App. 8A, 9A.

It found that the Connecticut Legislature could have reasonably concluded that in towns where the valuation next precedent to 1978 was long antiquated, that the coincidence of (1) the newly mandated immediate revaluation compressing many years of inflation and (2) the raise in percentage of actual value of real estate mandated to be taken for the assessment base—from 60% to 70%—established a classification of property that required a phase-in to protect against overly harsh results upon numerous owners of real property (especially home owners) and upon the economic viability of whole communities. (J.S. App. 16A, 19A).

It further found that there was a logical legislative rationale for a classification affording phase-in to municipalities where the over-all rise in the total grand list for real estate was 30% or more while denying the same to other municipalities. Qualification of a municipality for phase-in, it opined, was dependent on "sufficient overall impact in terms of increased assessment to justify the legislative remedy made available by the act. Additionally, municipalities not having the threshold increase of 30% are prevented from incurring the administrative costs of implementing a phase-in program; the use of the act is confined to those municipalities in which the potential of significantly enlarged tax burdens on real property owners or the possible disruption of the real estate market is sufficiently substantial to justify the administrative costs of the phase-in program." (J.S. App. 18A). It concluded that where a city-wide problem does not exist and the overall real estate assessments do not necessitate a phase-in of assessments, the act cannot be used solely to benefit selected individuals or for other political purposes (J.S. App. 19A).

Moreover, in reference to the "major thrust" of the Companies' argument that the distinction between real property that has appreciated and that which has not violated the equal protection clause of the Connecticut and Federal Constitutions (J.S. 20A), the Court concluded that only owners of appreciated real property potentially faced the " 'double barrel' tax impact" (J.S. App. 20A) and "are precisely those who would otherwise be

threatened with the greatest increase in assessment" (J.S. App. 20A, 21A) and needed delay in the full impact of coincidence of revaluation and the rise of percentage rate of assessment of valuation. While the distinction may prolong certain inequities, the Court found they are only temporary in nature (J.S. App. 21A), and "it cannot be disputed that the legislature may proceed one step at a time to remedy a harm" (J.S. App. 21A).

The Supreme Court of Connecticut further concluded that the Companies' contention that the concerned legislation did not confer upon personal property a phase-in benefit like unto real property was not of constitutional significance because "realty and personalty are not part of a class of like property" (J.S. App. 13A). It observed as to the ameliorative effect of phase-in on real property assessments that:

> ". . . The legislature may well have feared that although the appreciation in the value of that property may have been gradual over the years, the cumulative appreciation may have been so substantial that when reflected in the subsequent assessment, forced sales, foreclosures, and other conceivable hardships might result." (J.S. App. 19A).

and further that:

> ". . . It is interesting to note that although the act extends to commercial, residential, industrial, and other real property, legislative history reveals that homeowners were of special concern, and the act was intended to insulate them from at least some of the burden of revaluation. See, e.g., 21 H.R. Proc., pt. 10, 1978 Sess., pp. 4237-39; 4241-42; 4249; 4251; 4253." (J.S. App. 19A, 20A).

The restructuring of the assessment process could logically be deemed by the legislature conceptually fairer than the assessment process it was designed to correct. It provided for the cessation of the use of long antiquated values for real estate assessments and for equality in the percentages of real and personal property values to be used in the assessment process. The fact

that for state policy reasons the improvement in the assessment process was in some respects only gradual rather than immediate did not render the legislative concept constitutionally obnoxious. While the argument of the Companies is that they will have to pay more with phase-in operative than without its being operative, there is no showing or analysis in the record that they will pay more than if the legislature had not acted at all, i.e. without the corrective effort having been undertaken.

The theme of the Companies' attack upon the concerned legislation is that it effectuates an "intentional and systematic underassessment" of real property other than its own. That theme and the cases urged to support it are significant only where the legislature has not constitutionally classified property; which is not the case here.

No Substantial Federal Question is Presented

1. The decision of the Supreme Court of Connecticut is based on a thorough and accurate understanding of the well-established principles set forth by this Court in similar challenges to state taxing statutes under the Equal Protection Clause of the United States Constitution. Relying expressly on the case of *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973), as well as others,[6] the Connecticut Supreme Court recognized that "the constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest." Id. at 55. This continues to be the appropriate criterion for measuring state economic regulation, where, as here, the state and city "phase-in" procedure "neither contains a suspect classification nor impinges on a fundamental right" (J.S. App. 13A). See e.g., *City of New Orleans* v. *Dukes* 427 U.S. 297, 303-304 (1976); *County Board of Arlington County, Virginia* v. *Richards* 434 U.S. 5 (1977);

[6]The Court also relied on *Dandridge* v. *Williams*, 397 U.S. 471 (1970); *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 527 (1959); *Louisville Gas and Electric* v. *Coleman*, 277 U.S. 32, 37 (1928); *Carmichael* v. *Southern Coal and Coke Co.* 301 U.S. 495, 509 (1937). See also other cases cited at J. S. App. 13A-16A.

Tribe, *American Constitutional Law* (1978 ed.) Sec. 16 - 5, p. 1000.

The Connecticut Supreme Court concluded, after reviewing a fully developed factual record, that the purpose of the "phase-in" statute and ordinance was to ameliorate the coincidence of revaluation of real estate after fourteen (14) years of inflation with the concurrent raising of the assessment percentage on real estate from sixty per cent (60%) of true and actual value to seventy per cent (70%) of true and actual value on numerous owners of real property, particularly home owners, with whom the Legislature was expressly concerned (J.S. App. 16A, 19A, 20A). These real property owners might be exposed to a dramatic and sudden increase in taxes, and the "double-barrelled" impact of the new statutory structure might precipitate individual foreclosures or create great economic hardship in certain communities. In New Haven, 95 per cent (95%) of the parcels of real property, increased in value and assessment, and were thus eligible for the phase-in's protection. (J.S. App. 47A). Certainly it was rational for the Legislature, in deciding to make more balanced the comparative value of real property (through a current revaluation) and its rate of assessment (now, to be equal to the rate for personal property), to recognize the need to cushion, for a limited period, the potentially harsh effect of these corrective procedures by making them gradually applicable through a "phase-in program." Similar phase-in programs on real property assessment have been upheld elsewhere, *National Can Corp.* v. *State Tax Commission of Maryland,* 220 Md. 418, 153 A.2d 287 (Ct. App. Md 1960), *appeal dismissed,* 361 U.S. 534 (1959), as consistent with this Court's admonition in equal protection challenges that a "large area of discretion . . . is needed by a legislature in formulating sound tax policies." *Madden* v. *Kentucky,* 309 U.S. 83, 87-88 (1940).

2. "In the field of taxation, even more than in other fields, legislatures possess the greatest freedom in classification." They are not required to develop taxation schemes which "resort to close distinctions or . . . maintain a precise, scientific uniformity with reference to composition, use or value," *Allied Stores of*

Ohio, Inc. v. *Bowers,* 358 U.S. 522, 527 (1959). The Legislature may distinguish between *and* among real and personal property, *Ohio Oil Co.* v. *Conway* 281 U.S. 146 (1930); *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 431; *Allied Stores of Ohio, Inc.* v. *Bowers, supra,* and it may recognize the peculiar effects of inflation on property values, *National Can Corp.* v. *State Tax Commision of Maryland, supra,* even if, in doing so, it proceeds one step at a time in remedying a harm or attains its goal in an imperfect manner. *Dandridge* v. *Williams,* 397 U.S. at 486-487. Moreover, "[s]ince the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the *most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Madden v. Kentucky,* 309 U.S. 83, 88 (1940) (emphasis added).[7] The Companies have failed to meet their burden here.

The Companies contend that the "phase-in" procedures create certain objectionable classifications between towns whose total real property value in 1978 exceeded by thirty per cent (30%) the real property value in 1977 and those that did not (J.S. App. 17A); between owners of real property who are subject to the "phase-in" and owners of personal property who are not (J.S. App. 19A); and between owners of real property who benefit from the "phase-in" because the value of their property increased and owners of real property who do not benefit from the phase-in because the value of their property remained the same or decreased (J.S. App. 20A). We agree these "classifications" exist, but, as the Connecticut Supreme Court found, each

---

[7]See *San Antonio Independent School District* v. *Rodriguez, supra* at 41. See also *Baldwin v. Fish and Game Commission of Montana* 436 U.S. 371, 388-389 (1978) citing *City of New Orleans* v. *Dukes, supra,* at 433; *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 433; and *State Board of Tax Commissioners of Indiana v. Jackson,* 283 U.S. 527, 537 (1931).

is rationally related to meeting the State's legitimate purpose in enacting the phase-in program and are constitutionally permissible.

a. The Supreme Court of Connecticut found that members of the Legislature, "who enjoy a familiarity with local conditions," *San Antonio Independent School District* v. *Rodriguez, supra,* had a rational basis for selecting the thirty per cent (30%) increase requirement which triggered the act and ordinance. "This percentage increase requirement ensures . . . there is a sufficient overall impact in terms of increased assessment to justify [the phase-in]" (J.S. App. 18A), but that the phase-in procedure will be imposed only on those municipalities in which the potential harm and disruption caused to individual owners or to the area generally justify the attendant administrative costs, (cf. *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 511 (1937)), and additionally, that the "overall" municipal requirement of thirty per cent (30%) precluded the possible selective, individual application of the "phase-in" for political reasons within communities not substantially harmed by the "double-barreled" tax (J.S. App. 18A, 19A).

b. The Legislature, the Court found, also reasonably drew the line between personal and real proprty. Being familiar "with local conditions," (*San Antonio Independent School District* v. *Rodriguez, supra*), especially the tax burden on homeowners and an already poor real estate market (J.S. App. 19A), the fact that revaluations may have not occurred in at least ten years (14 years in New Haven), and the increase it had mandated in the percentage of assessment, the Legislature "may well have feared that . . . the cumulative appreciation [in real property values] may have been so substantial that when reflected in the subsequent assessment, forced sales, foreclosures and other conceivable hardships might result" (J.S. App. 19A) Personal property, which is valued annually, is not generally subject to a sudden and dramatic rise in value. *Id.* Also, being of a different class than realty, it "may be differently classified and taxed, without requirement for equality," *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 437.

c. Finally, the Companies' contention about the distinction between real property owners whose valuation has increased and those owners whose valuation had remained the same or decreased is confronted directly by the Legislature's fundamental purpose in enacting the "phase-in." "[*O*]*nly* owners of *appreciated* property potentially would face a significant 'double-barrel' tax impact resulting from the coincidence of the . . . mandatory periodic revaluation . . . and [the] . . . uniform assessment rate . . . [O]wners of realty who arguably receive the greatest protection . . . are *precisely* those who would otherwise be *threatened* with the greatest increase in assessment" and the possibility of forced sales, forclosures, and other conceivable hardship (J.S. App. 20A, 21A) (emphasis added). Thus in addition to this distinction having a rational basis, as found by the Connecticut Supreme Court, it also was an *integral part* of the Legislature's 1978 tax program, and reflected "the making of wise decisions with respect to the raising and disposition of public revenues." *San Antonio Independent School District* v. *Rodriguez, supra.* To sustain its contention, therefore, the Companies "would have the Court intrude in an area in which it has traditionally deferred to state legislatures . . . [and] . . . direct the [Connecticut Legislature] either to alter drastically the present [phase-in] system or to throw out the property tax altogether," *San Antonio Independent School District* v. *Rodriguez, supra,* at 40-41.

In the final analysis, the Companies' contentions were subjected to a thorough review in accordance with the correct legal standard and they failed to meet their burden. They raised no jurisprudentially unique arguments in the Court below or in the Jurisdictional Statement filed in this Court. The decision by the Connecticut Supreme Court is consistent with this Court's equal protection decisions, and its own.

The questions raised by all of the appellants are so plainly foreclosed by previous equal protection decisions of this Court in the area of state taxation that they are wanting in substance and present no substantial federal question.

Conclusion

WHEREFORE, the City of New Haven respectfully moves this Court to dismiss the appeals on the ground there is no substantial federal question presented or, in the alternative, to affirm the judgment of the Supreme Court of the State of Connecticut on the ground that the questions presented are so wanting in substance as not to need further argument.[8]

---

[8]This Court may wish to summarily affirm the decision by the Connecticut Supreme Court. In view of the fact the questions raised by the Companies are so plainly foreclosed by the previous equal protection decisions of this Court in the area of State taxation, they are so wanting in substance as to make further argument unnecessary. See *City of Boston* v. *Jackson*, 260 U.S. 309, 314 (1922); *Hodges* v. *Snyder*, 261 U.S. 600, 601 (1922).

Respectfully submitted,

CHARLES G. ALBOM
Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8232
Counsel for Appellees

Of Counsel:
CLARINE NARDI RIDDLE
Deputy Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8234

Certificate of Service

Charles G. Albom, a member of the Bar of this Court, hereby certifies that the copies of the foregoing Motion To Dismiss or Affirm has been sent by first class mail, postage prepaid, to the attorneys for the appellants in the above-entitled case, on this 10th day of June, 1980, as follows:

1) John W. Barnett, Esq.
   195 Church Street
   New Haven, Connecticut, 06508

2) Donald F. Keefe, Esq.
   205 Church Street
   New Haven, Connecticut, 06509

3) Wiggin & Dana, Esqs.
   Madeline F. Grossman
   195 Church Street
   New Haven, Connecticut, 06508

4) Tyler, Cooper, Grant, Bowerman & Keefe, Esqs.
   Barry C. Hawkins and Susan J. Bryson
   205 Church Street
   New Haven, Connecticut, 06509

CHARLES G. ALBOM
Counsel for Appellees